

# Exhibit 2

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

--oOo--

TAYLOR SMART AND MICHAEL HACKER,  
individually and on behalf of all  
those similarly situated,  
Plaintiffs,

vs.

Case No.  
22-cv-02125-WBS-CSK

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, an unincorporated  
association,  
Defendant.

\_\_\_\_\_  
SHANNON RAY, KHALA TAYLOR, PETER  
ROBINSON, KATHERINE SEBBANE, and  
RUDY BARAJAS, individually and on  
behalf of all those similarly  
situated,

Plaintiffs,

vs.

Case No.  
23-cv-00425-WBS-CSK

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, an unincorporated  
association,  
Defendant.

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

VIDEO-RECORDED DEPOSITION OF DANIEL RASCHER, Ph.D.  
SAN FRANCISCO, CALIFORNIA  
MONDAY, DECEMBER 9, 2024

Reported by:

Anrae Wimberley, CSR No. 7778  
Job No. 7029700

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CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER  
Transcript of video-recorded deposition  
of DANIEL RASCHER, Ph.D., taken at Munger Tolles &  
Olson LLP, 560 Mission Street, 27th Floor,  
San Francisco, California 94105, and also via Zoom  
videoconference, beginning at 8:38 a.m. and ending  
at 3:57 p.m. on Monday, December 9, 2024, before  
Anrae Wimberley, Certified Shorthand Reporter No.  
7778.

1 APPEARANCES:

2 for Plaintiffs Taylor Smart and Michael Hacker,  
3 individually and on behalf of all those similarly  
4 situated:

5 KOREIN TILLERY, LLC

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14 For Plaintiffs Shannon Ray, Khala Taylor, Peter  
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17 situated:

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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 For Defendant National Collegiate Athletic  
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3 MUNGER, TOLLES & OLSON, LLP

4 BY: JUSTIN P. RAPHAEL, ESQ.

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9  
10 Also present:

11 SHAWNA HYNES, Videographer

12 VERITEXT LEGAL SOLUTIONS

13 -- oOo --

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

1 Veritext Legal Solutions, and I'm the videographer. 08:40:08  
2 The court reporter is Anrae Wimberley from the firm  
3 Veritext Legal Solutions.  
4 I am not related to any party in this  
5 action nor am I financially interested in the 08:40:20  
6 outcome.  
7 If there are any objections to proceeding,  
8 please state them at the time of your appearance.  
9 Counsel and all present will now state  
10 their appearances and affiliations for the record 08:40:32  
11 beginning with the noticing attorney.  
12 MR. RAPHAEL: Justin Raphael, Munger, Tolles &  
13 Olson, for the NCAA.  
14 MR. BROSHUIS: Garrett Broshuis of Korein  
15 Tillery on behalf of the witness and the plaintiffs 08:40:44  
16 in the Smart case.  
17 And joining me remotely is Steve Berezney,  
18 also from Korein Tillery.  
19 MR. STEWART: Dennis Stewart of the firm of  
20 Gustafson Gluek on behalf of the Ray plaintiffs. 08:40:58  
21 THE VIDEOGRAPHER: Thank you. Will the court  
22 reporter please swear in the witness.  
23 DANIEL RASCHER, Ph.D.,  
24 sworn in personally as a witness by the Certified  
25 Shorthand Reporter, testified as follows: 08:41:15

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1 EXAMINATION 08:41:15

2 BY MR. RAPHAEL:

3 Q. Good morning, Dr. Rascher.

4 A. Good morning.

5 Q. My name is Justin Raphael. I represent 08:41:33

6 the NCAA.

7 You have been deposed many times; correct?

8 A. Yes.

9 Q. About how many?

10 A. Three dozen, something in that order. 08:41:45

11 Q. How many times have you testified as an

12 expert in a case against the NCAA?

13 A. Let's see, O'Bannon, Alston, Rock, House,

14 Hubbard -- is that five?

15 Q. I counted five there, yes. 08:42:10

16 A. About five, I think, yes.

17 Q. So this would make your sixth time

18 testifying as an expert in a case against the NCAA?

19 A. I believe so.

20 Q. And you've been testifying against the 08:42:22

21 NCAA in antitrust cases for more than a decade?

22 A. Yes.

23 Q. And how much have you earned in total in

24 your career from testifying as an expert against the

25 NCAA? 08:42:37

1 MR. BROSHUIS: Objection; lack of foundation, 09:02:39  
2 outside the scope.  
3 MR. STEWART: Join.  
4 THE WITNESS: I mean, it depends. Both private  
5 and public universities generate revenues. Some of 09:02:49  
6 them get revenues from their school directly.  
7 The fact that the public universities get  
8 money from the state sort of passes through the  
9 university. It's not coming directly from the state  
10 typically. 09:03:09  
11 So in other words, once it -- you know,  
12 once the campus is deciding how to run its athletic  
13 department, it doesn't -- it sort of doesn't matter  
14 that the source is coming from the state versus from  
15 their own endowment or from their own private 09:03:20  
16 university sources.  
17 BY MR. RAPHAEL:  
18 Q. Do you know whether any state universities  
19 need approval of the state legislature to add  
20 personnel in their athletic department? 09:03:31  
21 MR. BROSHUIS: Same objections.  
22 MR. STEWART: Join.  
23 THE WITNESS: I do not know if that's the case.  
24 BY MR. RAPHAEL:  
25 Q. Now, were there differences among the 09:03:43

1 Division I schools that you consulted for in how 09:03:47  
2 they allocated their athletic budgets to different  
3 sports?

4 MR. BROSHUIS: Objection; outside the scope.

5 THE WITNESS: Yes. 09:03:57

6 BY MR. RAPHAEL:

7 Q. So some of the schools that you consulted  
8 for might have allocated a bigger proportion of  
9 their budget to some sports, whereas other schools  
10 may have allocated a bigger portion of their budgets 09:04:11  
11 to different sports; right?

12 MR. BROSHUIS: Objection; vague, outside the  
13 scope.

14 THE WITNESS: I mean, yeah, they're not all  
15 spending exactly the same amount or same percentages 09:04:22  
16 on each sport.

17 BY MR. RAPHAEL:

18 Q. And based on your work consulting for  
19 these Division I schools, what accounts for that?

20 MR. BROSHUIS: Same objections and foundation. 09:04:30

21 MR. STEWART: Join.

22 THE WITNESS: I mean, the schools decide how  
23 they're going to invest their dollars. And so some  
24 of that is accounted for by some of the NCAA rules,  
25 by conference rules, and then by their own 09:04:48

1 individual decision making, which, you know, is 09:04:52  
2 affected by the stakeholders that are helping them  
3 make their decisions.

4 BY MR. RAPHAEL:

5 Q. And what are some of the factors that you 09:05:03  
6 have observed in your consulting work for Division I  
7 schools that go into their individual decision  
8 making about how to allocate their budgets?

9 MR. BROSHUIS: Same objections.

10 MR. STEWART: Join. 09:05:17

11 THE WITNESS: Really, looking at what their  
12 goals are.

13 So if they want to have a broad-based  
14 program or not, the schools that I've worked with,  
15 some of them have -- you know, they try to look at 09:05:42  
16 their ROI on each sort of investment that they might  
17 make.

18 But the factors are really -- you know,  
19 really that. It's like sort of what do we need to  
20 do to meet our conference requirements and our NCAA 09:05:58  
21 requirements? What do we need to do to try to  
22 compete within our conference? What's the return on  
23 investing over here versus over there?

24 BY MR. RAPHAEL:

25 Q. In your experience consulting for 09:06:12

1 THE WITNESS: No. Some of them have sort of 09:07:24  
2 the minimum number of sports and others have a lot  
3 of sports, like an Ohio State or a Stanford or a  
4 Williams College.

5 BY MR. RAPHAEL: 09:07:34

6 Q. And some schools in Division I, in your  
7 experience, decide to focus maybe disproportionately  
8 on a few sports that may earn them the most return  
9 on investment; right?

10 MR. BROSHUIS: Objection; misstates the 09:07:48  
11 testimony, vague, outside the scope, lack of  
12 foundation.

13 MR. STEWART: Join.

14 THE WITNESS: I mean, as I said before, just  
15 each school has its own separate P&L statement. In 09:08:00  
16 other words, it's -- of course, the amount of  
17 dollars they're investing in a particular sport is  
18 going to vary across schools.

19 And the amount relative within the  
20 department can vary, although a lot of the schools 09:08:15  
21 sort of tend to follow a similar pattern, especially  
22 within the same conferences.

23 BY MR. RAPHAEL:

24 Q. I guess what I'm asking is, not all  
25 schools in Division I allocate their athletic 09:08:27

1 budgets proportionally in the same way; right? 09:08:32

2 MR. BROSHUIS: Objection; vague, also lacks

3 foundation.

4 MR. STEWART: The same. Join.

5 THE WITNESS: When you say -- 09:08:41

6 MR. BROSHUIS: Outside the scope.

7 THE WITNESS: When you say, "proportionally,"

8 to what?

9 BY MR. RAPHAEL:

10 Q. Well, different schools in Division I 09:08:48

11 allocate their athletic budgets to different sports

12 in different proportions; right?

13 MR. BROSHUIS: Same objections.

14 MR. STEWART: Join.

15 THE WITNESS: Yeah, as I said before, they -- 09:09:02

16 yeah, the relative dollar amounts or the absolute

17 dollar amounts can vary from school to school, but

18 they do tend to, within conferences, push themselves

19 in similar directions. So like having, you know,

20 somewhat relative investments. 09:09:22

21 I talked about this a fair amount in the

22 O'Bannon case.

23 BY MR. RAPHAEL:

24 Q. Is it the case that all schools in

25 Division I allocate their athletic budgets to 09:09:38

1 different sports in the same proportion? 09:09:41

2 A. No.

3 MR. BROSHUIS: Objection. The same objections.

4 MR. STEWART: Join.

5 THE WITNESS: No. 09:09:47

6 BY MR. RAPHAEL:

7 Q. Why not?

8 MR. BROSHUIS: Same objections.

9 MR. STEWART: Join.

10 THE WITNESS: Because they're investing to try 09:09:54

11 to satisfy their objectives.

12 BY MR. RAPHAEL:

13 Q. And in your experience, different schools

14 in Division I have different objectives for their

15 athletic departments; right? 09:10:07

16 MR. BROSHUIS: Objection; misstates testimony,

17 asked and answered, outside the scope still, and

18 still lack of foundation.

19 MR. STEWART: Join.

20 THE WITNESS: Could you ask that again? Sorry. 09:10:18

21 BY MR. RAPHAEL:

22 Q. In your experience, different schools in

23 Division I have different objectives for their

24 athletic departments; right?

25 MR. BROSHUIS: Same objections. 09:10:28

1 MR. STEWART: Join. 09:10:30

2 THE WITNESS: So as I said before, I think they

3 broadly have similar objectives and they invest

4 maybe in different ways to try to meet those

5 objectives, but they broadly have similar 09:10:40

6 objectives.

7 BY MR. RAPHAEL:

8 Q. Now, I think two of the schools that you

9 consulted for were UC Berkeley and USF; right?

10 A. Yes. 09:10:52

11 Q. Do UC Berkeley and USF prioritize the same

12 sports in their athletic department?

13 MR. BROSHUIS: Objection; lack of foundation,

14 outside the scope.

15 MR. STEWART: Join. 09:11:06

16 THE WITNESS: I mean, they have -- Berkeley

17 offers more sports than USF. So just by that, USF

18 can't prioritize football because it doesn't offer

19 football.

20 Of the sports that they offer in common, 09:11:20

21 they both, you know, emphasize basketball, men's and

22 women's. They both emphasize baseball.

23 Obviously, Cal Berkeley emphasizes

24 football and water polo and swimming. USF doesn't

25 offer water polo and swimming. 09:11:44

1 THE WITNESS: I'm trying to -- I know the 09:23:03  
2 length was part of it.  
3 I don't remember if the number was part of  
4 it, the number of scholarships.  
5 BY MR. RAPHAEL: 09:23:25  
6 Q. Are there any differences from the  
7 analysis that you did regarding injury and damages  
8 in this case and the analysis of injury and damages  
9 that you did in the Rock case?  
10 MR. BROSHUIS: Objection; foundation, outside 09:23:39  
11 the scope.  
12 THE WITNESS: I don't remember. I don't  
13 remember what I did in the Rock case.  
14 BY MR. RAPHAEL:  
15 Q. Sitting here today, do you have any memory 09:23:48  
16 of the opinions that you put forward regarding  
17 injury and damages in Rock versus the NCAA?  
18 MR. BROSHUIS: Objection; outside the scope.  
19 THE WITNESS: I don't remember.  
20 MR. RAPHAEL: All right. Let's mark this as 09:24:07  
21 Exhibit 80.  
22 (Deposition Exhibit 80 was marked.)  
23 (Witness reviews document.)  
24 BY MR. RAPHAEL:  
25 Q. So Exhibit 80 is a copy of the expert 09:24:50

1 available in basketball and football. 09:34:45

2 Q. Those are the only sources of publicly  
3 available information on salaries paid to coaches at  
4 Division I schools that you're aware of?

5 A. That I'm aware of, yes. 09:34:57

6 Q. How does an economist define the but-for  
7 world?

8 MR. BROSHUIS: Objection; vague, overbroad.

9 THE WITNESS: Generally, it's if the  
10 allegations in the case were true and there was -- 09:35:16  
11 you could sort of rewind the clock and say, Let's  
12 assume that these -- whatever -- in this case this  
13 rule was not in place, what would the world look  
14 like?

15 BY MR. RAPHAEL: 09:35:39

16 Q. Would you agree that incentives are very  
17 important in economics?

18 MR. BROSHUIS: Objection; vague, foundation.

19 THE WITNESS: Yes.

20 BY MR. RAPHAEL: 09:35:46

21 Q. And should an economist modeling the  
22 but-for world assume that all market participants  
23 would act consistent with their economic incentives?

24 MR. BROSHUIS: Objection; outside the scope,  
25 vague, foundation. 09:36:01

1 THE WITNESS: When modeling the but-for world? 09:36:03

2 BY MR. RAPHAEL:

3 Q. Yes.

4 A. It sort of depends on the situation and

5 the structure that they're in. 09:36:11

6 But, generally, they're going to make

7 decisions that benefit them in the way that they see

8 how their benefits work.

9 Q. And that's a fundamental assumption of

10 economics, that people generally act in accordance 09:36:24

11 with their incentives?

12 MR. BROSHUIS: Same objections.

13 THE WITNESS: Yes.

14 BY MR. RAPHAEL:

15 Q. In modeling the but-for world in this 09:36:33

16 case, have you assumed that coaches who worked as

17 volunteers would have negotiated their salaries?

18 A. I don't make that assumption.

19 Q. Okay. Could you go to paragraph 39 of

20 your report? 09:36:53

21 Your declaration, excuse me.

22 A. This one or my -- the most recent one?

23 Q. The one that's in front of you.

24 A. What was that paragraph?

25 Q. It's on page 19, paragraph 39. 09:37:12

1 without NCAA rules saying, you know, they couldn't 09:43:36  
2 do that or that they had to pay them zero.  
3 BY MR. RAPHAEL:  
4 Q. So as we sit here today in 2024, the NCAA  
5 Division I bylaws say that baseball programs can 09:43:48  
6 only pay four paid coaches?  
7 A. The head coach and then the three  
8 assistant coaches, yeah.  
9 Q. Okay. Now, are you assuming that that  
10 rule would have been in place during the class 09:44:05  
11 period in the but-for world that you're modeling?  
12 A. Yes.  
13 Q. In your view, is there anything  
14 anticompetitive about an NCAA bylaw that says that  
15 baseball programs can only hire a paid head coach 09:44:31  
16 and three paid assistants?  
17 MR. BROSHUIS: Objection; outside the scope,  
18 lack of foundation.  
19 THE WITNESS: I don't have an opinion on that.  
20 BY MR. RAPHAEL: 09:44:48  
21 Q. So the but-for world that you have modeled  
22 in this case is one where there is a maximum number  
23 of transactions in the labor market that could have  
24 taken place; right?  
25 A. Can you clarify what you mean by that? 09:45:00

1 Q. Sure. So I think you testified that the 09:45:04  
2 but-for world you're assuming in this case is one  
3 where each baseball program could only hire a  
4 maximum of three paid assistants; right?

5 A. Yes. 09:45:15

6 Q. Okay. So -- and the labor market that you  
7 have defined in this case is for Division I  
8 assistant baseball coaches?

9 A. Yes.

10 Q. Okay. So in the but-for world that you 09:45:27  
11 have modeled in this case, there is a maximum number  
12 of transactions in the market for Division I  
13 assistant baseball coaches; right?

14 MR. BROSHUIS: Objection; vague.

15 THE WITNESS: "Transactions," you mean the 09:45:42  
16 hiring of a coach?

17 BY MR. RAPHAEL:

18 Q. Correct.

19 A. Oh, okay.

20 Well, let's see. There's a number of 09:45:51  
21 schools and three coaches -- assistant coaches, so,  
22 yeah, I guess there would be a fixed number.

23 Q. And the fixed number of paid assistant  
24 coaches who could have been hired in the market in  
25 the but-for world could be lower than the number of 09:46:11

1 Q. Have you ever worked on cases involving 09:47:20  
2 price fixing of consumer products?

3 A. Yes. Contact lenses, carpets, brand-name  
4 drugs, flat-panel televisions.

5 There may be others. Those are ones that 09:47:49  
6 come to mind.

7 Q. And in those cases involving alleged price  
8 fixing of consumer products, was there a fixed cap  
9 on the number of transactions that could have  
10 occurred in the market in the but-for world? 09:48:03

11 MR. BROSHUIS: Objection; foundation.

12 THE WITNESS: I mean, I don't remember the  
13 details of those cases.

14 MR. STEWART: Just when you hit a convenient  
15 spot, could we take a break? 09:48:14

16 MR. RAPHAEL: That's fine now.

17 THE VIDEOGRAPHER: This marks the end of Media  
18 No. 1. Off the record. The time is 9:48.

19 (Recess taken.)

20 THE VIDEOGRAPHER: This marks the beginning of 09:59:34  
21 Media No. 2 in the deposition of Daniel Rascher.  
22 We're back on the record. The time is 9:59.

23 BY MR. RAPHAEL:

24 Q. Dr. Rascher, are you offering any opinion  
25 about the amount of revenue that any athletics 09:59:51

1 department in Division I would have earned in the 09:59:57  
2 but-for world?

3 MR. BROSHUIS: Objection. Report speaks for  
4 itself.

5 THE WITNESS: No, I'm not offering an opinion 10:00:10  
6 on that.

7 BY MR. RAPHAEL:

8 Q. So you're not assuming -- you're not  
9 making any assumption about the amount of revenue  
10 that any athletics department in Division I would 10:00:19  
11 have earned in any year during the class period?

12 MR. BROSHUIS: Same objection.

13 THE WITNESS: My analysis takes -- again, as an  
14 economist is supposed to do in the but-for world,  
15 I'm trying to change as little as possible tied 10:00:33  
16 directly to the case.

17 So just change the rule, go back in time.  
18 So the athletics departments were earning revenues  
19 from their baseball programs. And so my analysis  
20 continues with that same set of information. 10:00:54

21 BY MR. RAPHAEL:

22 Q. So you're not assuming that any Division I  
23 athletics department would have earned more revenue  
24 or had more funding during the class period in the  
25 but-for world than they actually had in the actual 10:01:11

1 And we see this in Alston payments. We 10:04:50  
2 see this in cost-of-attendance payments, which are  
3 much larger total dollar amounts, that the schools  
4 adjust to that as it goes forward.

5 And so some of the schools may wait a year 10:05:03  
6 to do that, and that's why we have the lingering  
7 effects problem that we need to solve. Other  
8 schools may do it right away. Just like we saw in  
9 '23/'24, schools all of a sudden were allowed to  
10 hire a third coach, and they did and they paid them 10:05:23  
11 and then they came up with the funding for it.

12 BY MR. RAPHAEL:

13 Q. Do you agree that at least some schools in  
14 order to fund the salary of an additional paid  
15 baseball coach would have had to reduce some other 10:05:30  
16 expenditure at the university?

17 MR. BROSHUIS: Objection; misstates testimony.

18 MR. STEWART: Objection; lacks foundation.

19 MR. BROSHUIS: And lacks foundation.

20 THE WITNESS: At the university, possibly, yes. 10:05:42

21 But they also may have, you know,  
22 continued to sort of fundraise or they would have  
23 waited a year and then they would have allocated  
24 some of that 6 percent growth in their revenues.

25 (Reporter seeks clarification.) 10:06:07

1 BY MR. RAPHAEL: 10:06:07

2 Q. Do you know which of those strategies for  
3 funding the additional paid baseball coach each  
4 university would have taken in the but-for world?

5 MR. BROSHUIS: Objection; foundation. 10:06:22

6 THE WITNESS: I don't need to know that, and I  
7 don't know that.

8 BY MR. RAPHAEL:

9 Q. Okay. So you've not done any analysis of  
10 where the schools who you say would have hired an 10:06:28  
11 additional paid baseball coach in the but-for world  
12 would have gotten the money to do that; right?

13 MR. BROSHUIS: Same objection.

14 THE WITNESS: I mean, as I -- as we've  
15 discussed here, in all of the work I've done in 10:06:41  
16 these NCAA cases and the work for universities,  
17 right, they basically take from the least important  
18 thing on campus.

19 Another thing that happened at USF was  
20 they used to collect our trash in our offices every 10:06:58  
21 day. When we had a budget crisis, one of the  
22 things, they started collecting trash twice a week,  
23 and they saved tens of thousands of dollars doing  
24 that.

25 So, you know -- and they spent that. I 10:07:13

1 do it in the first year, and so you might apply 10:18:43  
2 damages to those schools. And then in the second  
3 year, we pick a number of more schools and then in a  
4 third year and then you finally get to equilibrium.  
5 I just made that -- those steps, you know, 10:18:55  
6 three-plus years before.  
7 BY MR. RAPHAEL:  
8 Q. So you assumed that the NCAA bylaws that  
9 are being challenged in this case would have ceased  
10 to exist at least three years before the start of 10:19:05  
11 the class period; is that correct?  
12 MR. BROSHUIS: Objection; asked and answered.  
13 THE WITNESS: Yeah, that's what my analysis  
14 assumes.  
15 BY MR. RAPHAEL: 10:19:13  
16 Q. Does your but-for world assume that the  
17 COVID pandemic would have occurred?  
18 MR. BROSHUIS: Objection; incomplete  
19 hypothetical.  
20 THE WITNESS: Yes. 10:19:24  
21 BY MR. RAPHAEL:  
22 Q. And are you offering any opinion about how  
23 the COVID-19 pandemic would have affected revenues,  
24 funding or expenditures at any Division I school?  
25 A. Well, I account for that in my analysis. 10:19:36

1 Q. How is someone harmed who was a volunteer 10:21:53  
2 at a school who would not have hired an additional  
3 paid baseball coach in the but-for world?

4 MR. BROSHUIS: Misstates prior testimony.

5 THE WITNESS: Because the market is harmed, and 10:22:06  
6 so that person -- imagine there's a school near them  
7 that does pay, then all of a sudden maybe that  
8 person or someone else takes that job, and then it  
9 opens up another -- like there's more paid jobs  
10 available for this person to try to compete for. 10:22:19

11 When there's fewer paid jobs available,  
12 then the market is harmed and, you know, that's what  
13 antitrust harm is.

14 BY MR. RAPHAEL:

15 Q. So the way that someone who volunteered at 10:22:29  
16 a school who would not have hired an additional paid  
17 baseball coach in the but-for world could have been  
18 harmed is that they might have been able to work  
19 coaching baseball at a different school?

20 MR. BROSHUIS: Objection; still misstates the 10:22:43  
21 prior testimony.

22 THE WITNESS: I mean, the whole market -- you  
23 know, the whole market wage was going up, and so  
24 that essentially puts pressure on schools to meet  
25 that wage, right, because that person may go and 10:22:53

1 coach at this other school nearby, for instance. 10:22:56

2 BY MR. RAPHAEL:

3 Q. Right.

4 A. So everyone in the market is harmed.

5 That's how -- when a market is harmed, it affects 10:23:05

6 the entire market. It may affect different elements

7 of the market, you know, differently, but all of

8 these volunteer coaches had no chance to try to go

9 and compete for these paid positions because the

10 rules say it was in place. 10:23:22

11 Q. And what is the amount of damage that

12 someone who volunteered at a school that would not

13 have hired an additional paid baseball coach in the

14 but-for world suffered?

15 MR. BROSHUIS: Objection; still misstates the 10:23:41

16 testimony.

17 THE WITNESS: So my analysis is measuring a

18 zero dollar damage for them, if I'm understanding

19 your hypothetical, but there is potentially a damage

20 to them because, you know, they couldn't have gotten 10:23:52

21 some other job. It's just more of -- it's just a

22 different way of trying to measure damages.

23 BY MR. RAPHAEL:

24 Q. How would you try to measure damages for

25 someone who volunteered at a school that would not 10:24:04

1 have hired an additional paid baseball coach? 10:24:06

2 MR. BROSHUIS: Objection; still misstates the  
3 testimony.

4 THE WITNESS: I would have to sit down and try  
5 to figure out a way to do that. 10:24:24

6 As I sit here, I can't give you an expert  
7 opinion on that.

8 BY MR. RAPHAEL:

9 Q. To estimate the damages for someone who  
10 was a volunteer at a school that would not have 10:24:33  
11 hired an additional paid baseball coach, would you  
12 have to figure out what other school would have  
13 hired that person?

14 MR. BROSHUIS: Objection; still misstates the  
15 testimony and incomplete hypothetical. 10:24:47

16 THE WITNESS: I mean, one might be able to look  
17 at sort of what is happening to the marketplace in  
18 general, right? What is the market wage now, what  
19 was it before, right? Could you apply something  
20 around that controlling for some set of factors 10:25:00  
21 about schools, conferences, things like that?

22 But I'm not doing that in this case.

23 BY MR. RAPHAEL:

24 Q. Can you think of any way that someone who  
25 was a volunteer at a school that would not have 10:25:19

1 hired an additional paid baseball coach would have 10:25:22  
2 been harmed other than losing out on compensation  
3 they would have earned at a different school?

4 MR. BROSHUIS: Objection; still misstates the  
5 testimony. 10:25:35

6 THE WITNESS: I mean, not as I sit here, I  
7 can't think of a way to do that. But I've given you  
8 some examples.

9 BY MR. RAPHAEL:

10 Q. If a Division I college or university 10:26:02  
11 would have hired a different coach for a paid  
12 position that it hired for the volunteer position,  
13 was the volunteer who had the volunteer position  
14 harmed?

15 MR. BROSHUIS: Objection; lack of foundation, 10:26:17  
16 outside the scope.

17 THE WITNESS: Again, they're in a market in  
18 which they are harmed and they didn't have a chance  
19 to be able to try to compete for that position or  
20 positions at other schools. 10:26:34

21 BY MR. RAPHAEL:

22 Q. Right. So my hypothetical is that the  
23 Division I college or university would have hired a  
24 coach for the paid position in the but-for world who  
25 was different than the volunteer at that school 10:26:47

1           A.     I don't remember the title. I believe it                 10:33:35  
2       has the word "coconuts" in the title, so you could  
3       probably find it.

4 Q. And Peter Diamond's work, is that  
5 considered standard in labor economics? 10:33:44

6 A. Yeah, it's very foundational.

7 Q. And you did not try to implement any  
8 version of the Peter Diamond type model where you  
9 calculated the probability that coaches would  
10 actually find a match with a school; right? 10:33:58

11 MR. BROSHUIS: Objection; misstates testimony.

12 THE WITNESS: My analysis, I have a different  
13 way of measuring damages.

14                   You asked me about how one could measure  
15           damages for people that I'm not measuring damages                   10:34:13  
16           for. I have my own method for measuring damages for  
17           the volunteers at the schools that would have hired  
18           in the but-for world had they been allowed to.

19 BY MR. RAPHAEL:

20 Q. Oh, okay. Thank you. Let me just make 10:34:26

21 sure I understand that.

22                   So the Peter Diamond type model where you  
23           try to estimate the probability of workers finding  
24           matches, that's a way that you might try to estimate  
25           damages for people who volunteered at a school that                   10:34:40

1 wouldn't have hired an additional paid coach; right? 10:34:44

2 A. Again, I -- you would have to sit down and

3 work through all of that, but that is a possibility

4 or a path to go down.

5 Q. Right. 10:34:53

6 A. My analysis -- I mean, I have better data

7 than Peter Diamond had in his articles in terms of

8 like he was looking at prospecting information.

9 I have a natural experiment here, that,

10 you know, we didn't have this natural experiment, if 10:35:08

11 this rule were still in place, right, then we would

12 have to come up with a different way of measuring

13 damages, and one might go down the path that I was

14 talking about with Peter Diamond.

15 Q. And -- but just to be clear, you did not 10:35:20

16 implement any model of the sort that Peter Diamond

17 did about predicting the probability that coaches in

18 the class would have found a match at any particular

19 school; right?

20 A. I mean, I'm predicting the probability of 10:35:36

21 the coaches being hired, and those coaches did those

22 jobs. So that's how I do it.

23 But I'm not doing a matching model.

24 Q. What are some of the inputs into the

25 matching model that Peter Diamond has put forward in 10:35:52

1 the economic literature? 10:35:55

2 MR. BROSHUIS: Objection; outside the scope.

3 THE WITNESS: I mean, I don't recall. He just

4 has skill -- people have skill sets. There's firms

5 with different demands. They're in the same labor 10:36:06

6 market. There's search cost.

7 You know, it's mostly theoretical is the

8 work that he was doing it with.

9 BY MR. RAPHAEL:

10 Q. So is it standard labor economics that 10:36:23

11 workers' skill sets will affect their ability to get

12 matches with employers?

13 MR. BROSHUIS: Objection; outside the scope.

14 THE WITNESS: I mean, certainly, workers'

15 skills affect the labor market, yeah. I mean, 10:36:40

16 that's pretty straightforward. More so in a -- sort

17 of a textbook labor market, meaning things are open,

18 things are competitive, information is known on both

19 sides of the table.

20 You know, as you start to restrict what's 10:36:57

21 allowed or what's known, then all of a sudden, you

22 can have -- you know, you can have different

23 outcomes.

24 Again, I don't have to worry about any of

25 that stuff because I have a natural experiment. 10:37:08

1 BY MR. RAPHAEL: 10:37:11

2 Q. So is it standard labor economics that the

3 matches between workers and employers will depend on

4 the employers' demand and the workers' skill sets?

5 MR. BROSHUIS: Objection; misstates 10:37:26

6 testimony --

7 THE WITNESS: Among other things.

8 MR. BROSHUIS: -- misstates testimony, outside

9 the scope --

10 THE WITNESS: I mean, again -- 10:37:28

11 MR. BROSHUIS: -- foundation.

12 (Reporter seeks clarification.)

13 THE WITNESS: I mean, in a labor market, you

14 know, you have buyers and sellers, right? And the

15 sellers have various skill sets and the buyers have 10:37:39

16 various demands, and so they -- that's true in this

17 labor market, and that's true in other labor

18 markets.

19 BY MR. RAPHAEL:

20 Q. And skill sets and demand vary from 10:37:49

21 employee to employee and employer to employer?

22 MR. BROSHUIS: Objection; outside the scope.

23 THE WITNESS: I mean, they can.

24 BY MR. RAPHAEL:

25 Q. Can you think of any reason why volunteer 10:38:01

1 Q. As a matter of economics, is it true that 10:39:30  
2 some people might accept something for free that  
3 they wouldn't pay for if they had to?

4 MR. BROSHUIS: Objection; outside the scope,  
5 foundation. 10:39:43

6 THE WITNESS: "Accept something," like can you  
7 give me an example?

8 BY MR. RAPHAEL:

9 Q. Sure. So we're looking across from the  
10 ballpark; right? 10:39:51

11 A. Yes.

12 Q. Okay. So is it true that sometimes at  
13 baseball games, the team gives out stuff for free  
14 that people will accept even though they might not  
15 buy those things if they had to? 10:40:04

16 MR. BROSHUIS: Objection; incomplete  
17 hypothetical, outside the scope.

18 THE WITNESS: Yes.

19 BY MR. RAPHAEL:

20 Q. So as a matter of economics, is it true 10:40:10  
21 that sometimes people or companies will accept  
22 things for free that they wouldn't pay for if paying  
23 for them was required?

24 MR. BROSHUIS: Same objections.

25 THE WITNESS: Sure, that's possible. It's not 10:40:25

1 relevant here, but that's possible. 10:40:28

2 BY MR. RAPHAEL:

3 Q. Could you go to paragraph 136 of your  
4 expert declaration that's in front of you.

5 (Witness reads document.) 10:41:07

6 Q. Sorry, paragraph 135, just above that.  
7 I'm sorry, the same page. And I'm looking at the  
8 end of the paragraph.

9 A. All right. Let me just take a look at it.

10 Q. Sure. Feel free to read whatever you need 10:41:33  
11 to read.

12 (Witness reads document.)

13 A. Okay.

14 Q. So do you see at the end of paragraph 135  
15 of your November 1st expert declaration, you say 10:42:12  
16 that "the harm is measured as an appropriate  
17 estimate of the value of the services actually  
18 provided, in a world without collusion to zero out  
19 pay."

20 Do you see that? 10:42:28

21 A. Somehow, I didn't see where you read that  
22 even though I'm here. Is that the last sentence?

23 Q. It is. I apologize.

24 A. Okay. No, no, that's okay. I was somehow  
25 up a sentence. 10:42:40

1 A. Some of them did, but many of them hired 10:45:30  
2 the same coaches, also.

3 Q. And some hired different coaches; right?

4 A. Yes.

5 Q. So are you assuming that, at schools that 10:45:35  
6 hired an additional paid coach who was different  
7 than the volunteer they hired, that both of those  
8 coaches provided the exact same amount of value to  
9 the university?

10 MR. BROSHUIS: Objection; irrelevant. 10:45:49

11 THE WITNESS: I don't need to assume that they  
12 provided the exact same amount of value.

13 BY MR. RAPHAEL:

14 Q. And because you didn't need to assume it,  
15 you didn't assume it? 10:45:57

16 MR. BROSHUIS: Objection; irrelevant.

17 THE WITNESS: Yeah, I don't assume that.

18 BY MR. RAPHAEL:

19 Q. Did you do any analysis to determine  
20 whether any two coaches who were hired, either 10:46:12  
21 before or after the class period, provided the same  
22 or a different amount of value to the schools where  
23 they coached?

24 MR. BROSHUIS: Objection; irrelevant.

25 THE WITNESS: Not directly. I mean, it's -- 10:46:34

1       some of that's baked into, I think, what they were                      10:46:37  
2       paid, but that wasn't necessary for me to do in  
3       order to do my analysis.

4 BY MR. RAPHAEL:

5 Q. And so you didn't do it? 10:46:44

6 MR. BROSHUIS: Same objections.

7 THE WITNESS: Yeah, I didn't -- I didn't --  
8 yeah, I didn't need to compare that because we have  
9 what the schools actually decided to do.

10 BY MR. RAPHAEL: 10:46:56

11 Q. Would you agree that the amount of value  
12 that a school gets from a coach's services is a  
13 function of the skills of that coach?

14 MR. BROSHUIS: Objection; foundation.

15 MR. STEWART: Vague. 10:47:11

16 THE WITNESS: Part of it, yeah.

17 BY MR. RAPHAEL:

18 Q. And so all things being equal, a school  
19 that gets the benefit of services from a more  
20 skilled coach would get more value than they get 10:47:21  
21 from a less skilled coach; right?

22 MR. BROSHUIS: Objection; incomplete  
23 hypothetical.

24 THE WITNESS: If everything else is held  
25 constant and assuming that the more skilled coach is 10:47:32

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1 MR. BROSHUIS: Same objection. 10:51:09

2 THE WITNESS: I mean, no, I didn't need to do

3 that, so no.

4 BY MR. RAPHAEL:

5 Q. For an economist, is the value that a 10:51:17

6 product or services provide the buyer the same as

7 the market price of that product or service?

8 MR. BROSHUIS: Objection; vague.

9 THE WITNESS: I mean, it depends. It depends

10 on the nature of the demand. 10:51:36

11 BY MR. RAPHAEL:

12 Q. Right. So the value that a product or

13 service provides a particular buyer is not always

14 the same as the market price of that product or

15 service? 10:51:50

16 A. Usually, the value is higher than the

17 market price or else they wouldn't have purchased

18 it.

19 Q. And the market price of a product or

20 service depends on the supply and demand of all of 10:52:00

21 the other buyers and all of the other suppliers in

22 the market; right?

23 MR. BROSHUIS: Objection; incomplete

24 hypothetical.

25 THE WITNESS: So, yeah, generally, in a 10:52:12

1 textbook situation, you know, where you don't have 10:52:14  
2 certain restrictions or you have information  
3 asymmetries and so forth, yeah, the market price  
4 evolves out of the demand and supply and the  
5 aggregation of the different demands and different 10:52:28  
6 supplies.

7 BY MR. RAPHAEL:

8 Q. So if an economist wanted to determine the  
9 market price of a product or service, they couldn't  
10 look at the value that one buyer got from that 10:52:39  
11 product or service; right?

12 A. I mean, that could provide information,  
13 sure. In fact, that's part of usually when someone  
14 does that process.

15 But they might look at other things, too. 10:52:51

16 Q. Do economists model the decisions of  
17 universities the same way that they model the  
18 decisions of for-profit firms?

19 MR. BROSHUIS: Objection; outside the scope.

20 THE WITNESS: Depends on the situation. 10:53:12

21 I discuss this quite a bit in O'Bannon and  
22 Alston, sort of the revenue theory of cost of  
23 running a nonprofit and how the nonprofits will tend  
24 to spend their revenues at a higher rate than say a  
25 for-profit might who tries to -- a for-profit might 10:53:32

1 whole paragraph for context. 10:56:25

2 THE WITNESS: Yeah.

3 (Witness reviews document.)

4 THE WITNESS: Now, I'm sorry, what was your

5 question? 10:57:00

6 BY MR. RAPHAEL:

7 Q. Why would volunteer coaches be at risk of

8 being lost to other paid positions in Division I?

9 A. Well, I mean, they might have been able to

10 go to say a smaller school and be the second 10:57:15

11 assistant or something like that.

12 Q. Is it correct as a matter of economics

13 that, in general, the more compensation that is

14 offered for labor, the more workers will be

15 interested in providing that labor? 10:57:41

16 MR. BROSHUIS: Objection; vague.

17 THE WITNESS: I mean, again, with all the

18 assumptions that go with that, yeah, compensation

19 has a positive impact on a worker choosing a job,

20 all else equal. 10:58:06

21 BY MR. RAPHAEL:

22 Q. And as an economist, all else equal, would

23 you expect more workers to be interested in

24 providing labor at a salary than for no salary?

25 MR. BROSHUIS: Objection; incomplete 10:58:17

1 hypothetical. 10:58:18

2 THE WITNESS: Again, it depends on the  
3 situation. Are there -- you know, depends on the  
4 labor market itself.

5 Yeah, it depends on the labor market. 10:58:29

6 BY MR. RAPHAEL:

7 Q. Why would it depend on the labor market?

8 A. Well, are there workers . . .

9 You know, if the San Francisco Giants  
10 offered to pay me a bunch of money to play baseball, 10:58:44  
11 that doesn't mean that I'm qualified to play  
12 baseball, you know? And so it depends on the nature  
13 of the labor market.

14 Q. As an economist, all else equal, would you  
15 expect more qualified workers to be interested in 10:59:02  
16 providing labor at a salary than at no salary?

17 MR. BROSHUIS: Objection; incomplete  
18 hypothetical.

19 THE WITNESS: As I said, it depends on what  
20 else is happening in the labor market. 10:59:14

21 But assuming we're in sort of a textbook,  
22 econ 101, then higher pay will tend to, you know,  
23 increase the labor supply.

24 But, again, it depends if that's -- you  
25 know, if that's the nature of the particular 10:59:30

1 question that you're asking. 10:59:34

2 BY MR. RAPHAEL:

3 Q. And have you studied that question in this  
4 case?

5 A. I mean, I have looked at where a lot of -- 10:59:40  
6 where the coaches came from, right, you know,  
7 what -- you know, what the coaches were doing prior  
8 to the rule change, and it's that coaches are coming  
9 from within the same labor pool.

10 So I have looked at that. 10:59:57

11 Q. Okay. And is it your opinion that there  
12 would not be more coaches interested in coaching at  
13 a salary than coaching at no salary?

14 A. Well, there's a fixed number of positions.  
15 So those -- the coaches that we saw move into these 11:00:18  
16 paid positions are coming from the same labor pool,  
17 right?

18 They're the ones who are getting these  
19 positions, were the prior volunteers at the various  
20 schools and the prior workers at those various 11:00:34  
21 baseball teams.

22 Q. Well, not all of the coaches who got paid  
23 positions after the bylaws changed had been  
24 volunteers; right?

25 A. Not all of them but a majority of them. 11:00:49

1 Q. So if coaches who took paid positions 11:06:39  
2 after the bylaws were amended had previously been  
3 coaching outside of Division I or not coaching in  
4 Division I at all, those jobs were not in the labor  
5 market that you've defined? 11:06:53  
6 A. The prior jobs?  
7 Q. Yeah.  
8 A. Yes, some of them had prior jobs that were  
9 outside of the labor market, but the bulk of them  
10 had coaching jobs within the Division I baseball. 11:07:04  
11 Q. So some people who took paid coaching jobs  
12 that were created after the bylaws were amended  
13 entered the labor market you have defined after the  
14 rules changed; right?  
15 A. It's a small amount, but yes, they did, 11:07:22  
16 and it doesn't impact my analysis of them.  
17 MR. RAPHAEL: I'm not recalling when we last  
18 broke but --  
19 MR. BROSHUIS: It's an hour eight.  
20 MR. RAPHAEL: -- this might be an okay time. 11:07:45  
21 THE WITNESS: Okay.  
22 THE VIDEOGRAPHER: This marks the end of Media  
23 No. 2. Off the record. The time is 11:07.  
24 (Recess taken.)  
25 THE VIDEOGRAPHER: This marks the beginning of 11:24:02

1 Certainly could have been possible, and 11:31:29  
2 the actual data would have borne that out anyway,  
3 like the actual experiment, but it doesn't impact my  
4 analysis.

5 Q. Well, in fact, some coaches who were first 11:31:41  
6 or second paid assistants at one school became the  
7 third paid assistant at another school after the  
8 bylaws were amended; right?

9 MR. BROSHUIS: Objection; assumes facts not in  
10 evidence. 11:31:54

11 THE WITNESS: I believe that was true. I think  
12 it was a small number of folks, yeah.

13 BY MR. RAPHAEL:

14 Q. Is there a concept in labor economics  
15 called a formal or systemic pay structure? 11:32:02

16 A. Yeah, I mean, there's pay structures,  
17 sure. I don't know, I'm not thinking about -- a  
18 systemic pay structure is something that I'm not  
19 recalling as I sit here.

20 Q. Are you offering any opinion that all 11:32:18  
21 Division I colleges and universities use a formal or  
22 rigid pay structure for coaches in their athletic  
23 departments?

24 A. No.

25 Q. Are you familiar with the concept of 11:32:33

1 selection bias? 11:32:36

2 A. Yes.

3 Q. What is that?

4 A. If you're wanting to analyze, say, a

5 population and you take a sample from that 11:32:46

6 population, is the sample representative of the

7 population further questions that you're

8 answering -- or asking.

9 Q. And is it important in econometric

10 analysis to avoid selection bias? 11:33:08

11 A. It can be. It depends on the nature of

12 the selection bias.

13 Q. Well --

14 A. In other words, if it's small, then it

15 doesn't change the outcomes very much. And, in 11:33:23

16 fact, trying to account for it can sometimes make

17 the outcomes worse, which is interesting, because

18 there aren't perfect ways to account for it. There

19 are sort of estimators that one can use.

20 So sometimes the estimators overshoot and 11:33:38

21 if you apply them, you may make the analysis worse.

22 Q. So there are tools that economists have

23 developed to try to address selection bias in

24 econometric analysis?

25 A. Yes. 11:33:56

1 Q. And, in fact, Dr. James Heckman won the 11:33:56  
2 Nobel Prize for coming up with some of those  
3 methods; right?

4 A. That and other work that he did, but yes.

5 Q. Did you do anything in your models in this 11:34:12  
6 case to avoid selection bias?

7 A. Yes. I mean, I looked at -- we had a very  
8 large sample. Usually you're talking -- selection  
9 bias becomes a problem when you have a small sample.

10 We have a very large sample. It's like 11:34:31  
11 what, two-thirds of the schools, which is a super  
12 large sample, right?

13 Yeah, and then I looked at that data  
14 compared to the population on some of the MFRS  
15 variables. In some of my sensitivity analysis, I 11:34:43  
16 looked at -- in fact, I forgot, Dr. Heckman, I used  
17 an inverse Mills ratio and looked at some of that  
18 analysis.

19 So I did look at that, but I didn't --  
20 it's really not likely to be a problem, especially 11:34:57  
21 in a probative analysis where you have got  
22 representation across the gamut of schools in terms  
23 of big and small or however else you want to define  
24 that.

25 Q. How about in your damages model, did you 11:35:10

1 do anything to avoid selection bias there? 11:35:14

2 A. Well, the damages model is based on the  
3 first step, which is, would the school pay or not.  
4 And then let me just think through this for a  
5 minute. 11:35:30

6 And then I'm relying on the actual  
7 payments. I don't see a selection bias issue there.  
8 Because those are the actual payments. And then I'm  
9 just doing a deflationary adjustment.

10 No, I don't see any sort of selection bias 11:35:46  
11 in the calculation of damages.

12 Q. You don't see any -- and so because you  
13 didn't see any potential selection bias issue with  
14 your method for calculating damages, you didn't take  
15 any steps to address selection bias in the 11:36:01  
16 calculation of damages after doing your regression?

17 A. Yeah, I didn't see -- I didn't see an  
18 issue.

19 I mean, the interesting part here, as you  
20 know, is that, you know, to my knowledge, the 11:36:19  
21 attorneys subpoenaed all of the schools, and so to  
22 the extent that one were to have found a selection  
23 bias, it would be driven by the defendants or the  
24 cartel members not turning over information, which  
25 economists have written for a while is not a 11:36:40

1 defense -- it should not be a defense because it 11:36:41  
2 creates poor incentives in antitrust cases.

3 Q. The only selection bias issue you could  
4 potentially see would be one created by which  
5 schools turned over information in response to 11:36:55  
6 subpoenas?

7 A. First, also for schools potentially that  
8 essentially an equilibrium might not have paid a  
9 coach.

10 Like, in other words, someone could think 11:37:14  
11 of a bias like that where you have a series of  
12 schools that an equilibrium wouldn't pay a coach,  
13 right? But I'm analyzing only damages for those  
14 schools that I believe in -- by conservative  
15 measure, where the equilibrium is, because I only go 11:37:28  
16 three years out, would pay a coach.

17 Q. Right. And so I'm just asking, in your  
18 damages model, after completing your regression  
19 where you predicted damages for coaches at schools  
20 that you say would have paid an additional coach, 11:37:46  
21 you didn't take any steps to address any selection  
22 bias problem that you were worried about?

23 A. I mean, I thought about the proper way to  
24 do damages, and I didn't see a selection bias  
25 problem there. 11:38:01

1 little more competitive. Yes, I guess it's 11:41:41  
2 calculating sort of that market rate.

3 Q. And as an economist, could you calculate  
4 the market rate in the but-for world without having  
5 some idea of what the market is? 11:41:55

6 A. Well, a single market rate, maybe that  
7 would -- I haven't thought enough about that because  
8 I haven't had to do that calculation.

9 But the individual amounts that are paid,  
10 you can see that appearing. You know, one could 11:42:22  
11 investigate a particular school and find out what  
12 they're paying for a particular position and then  
13 one would check to see, okay, is the market being  
14 restrained in some fashion. If it's not, then that  
15 can be representative of a market rate. 11:42:39

16 Again, assuming -- you know, in  
17 information, asymmetries are not there and common  
18 information -- perfect information is occurring  
19 across both parties.

20 Q. Now, your opinion is that the relevant 11:42:51  
21 labor market for baseball coaches is limited to  
22 baseball coaches; right?

23 Doesn't include coaches in other sports;  
24 right?

25 A. Correct. 11:43:05

1 Q. And why is that? 11:43:06

2 A. Essentially, based on some of the analysis  
3 that I've done in other cases, sort of that each  
4 sport has its own set of skills that aren't always  
5 transferable at the athlete and at the coaching 11:43:24  
6 level.

7 And based on sort of where we saw, even in  
8 this case, where those hires came from, they came  
9 from within baseball, actually. You didn't see the  
10 swimming coach saying, Hey, I'm going to become a 11:43:40  
11 third assistant coach over at such and such school.

12 Q. And so your opinion is that supply and  
13 demand for coaching services in baseball is  
14 different from supply and demand for coaching  
15 services in other sports? 11:43:54

16 MR. BROSHUIS: Objection; misstates testimony,  
17 foundation.

18 THE WITNESS: When you say, "different," I  
19 mean, it's -- you could have markets that look  
20 similar and they could be two different sports for 11:44:03  
21 sure.

22 But, I mean, from my analysis, I didn't  
23 need to consider any of these other markets.

24 BY MR. RAPHAEL:

25 Q. Now, what analysis did you do to reach 11:44:21

1 into becoming a Division I third assistant coach. 11:50:25

2 So like every labor market has people who  
3 enter the labor market who haven't had that exact  
4 training before. But the labor market is still  
5 defined as those jobs. 11:50:42

6 Q. During the class period, was the volunteer  
7 coach position a way for coaches to move their way  
8 up in the labor market?

9 MR. BROSHUIS: Objection; foundation.

10 THE WITNESS: Yes, generally. 11:50:56

11 BY MR. RAPHAEL:

12 Q. All right. So just to be clear, the  
13 position of baseball director is not in the relevant  
14 market you've defined; right?

15 A. Yeah. I mean, this is the previous job. 11:51:23  
16 So it -- yeah, it's not -- it's not in -- the  
17 relevant market is the Division I assistant baseball  
18 coaches.

19 Q. Right. And 8 percent of coaches who took  
20 additional paid positions after the bylaws were 11:51:35  
21 amended in your analysis in your November 1st  
22 declaration were baseball directors prior to doing  
23 that; right?

24 A. I don't know what the percentage is for,  
25 the updated version of Exhibit 1. 11:51:50

1 A. For the previous job they had, yes. 11:56:24

2 Q. Right. So --

3 A. That's important to keep in mind.

4 Q. I agree.

5 A. Okay. 11:56:34

6 Q. But 29 percent of the coaches who took

7 newly added paid positions, according to the data

8 that you looked at in your November 1st declaration,

9 previously had jobs that are outside of the relevant

10 market that you defined; right? 11:56:47

11 MR. BROSHUIS: Objection; asked and answered.

12 You've asked that same question four times

13 now.

14 THE WITNESS: Previously had jobs, just like a

15 college kid graduating from college with no 11:56:57

16 experience in a particular field is entering a

17 market that's not defined by them entering that

18 market as much as it's defined by the jobs that

19 people take in that market and what happens when

20 someone changes -- when there's a 5 or 10 percent 11:57:11

21 pay change.

22 Which, again, here, we have 100 percent

23 pay change.

24 BY MR. RAPHAEL:

25 Q. Is it common, sir, for kids graduating 11:57:19

1 college and trying to enter a particular job market 11:57:22  
2 to take a job for free for a little while?  
3 MR. BROSHUIS: Objection; foundation, calls for  
4 speculation.  
5 THE WITNESS: Graduating from school? 11:57:31  
6 BY MR. RAPHAEL:  
7 Q. Yeah.  
8 A. Common? It's not the majority. I'm sure  
9 it happens, but most students who are graduating who  
10 get a job are getting paid for that job. 11:57:44  
11 Q. And some students who graduate college  
12 take a job where they don't get paid in order to try  
13 and enter a market, right?  
14 MR. BROSHUIS: Same objection.  
15 THE WITNESS: That generally occurs while they 11:57:58  
16 are in college.  
17 BY MR. RAPHAEL:  
18 Q. Does it sometimes occur after people leave  
19 college that they work without compensation to try  
20 to enter a market? 11:58:06  
21 MR. BROSHUIS: Same objection.  
22 THE WITNESS: Of course it sometimes occurs.  
23 MR. STEWART: Just a note, I'm continuing to  
24 join in all of Mr. Broshuis' objections. Is that  
25 correct, Justin? 11:58:19

1 testimony. 12:02:10

2 THE WITNESS: Can you say that again? I'm

3 sorry.

4 BY MR. RAPHAEL:

5 Q. Sure. 12:02:15

6 Your model predicts that some schools who

7 hired volunteer baseball coaches would not have

8 hired a third assistant paid baseball coach in the

9 but-for world.

10 MR. BROSHUIS: Objection; misstates prior 12:02:29

11 testimony.

12 THE WITNESS: My analysis says conservatively,

13 here are the schools that it's reasonable to

14 conclude would have hired a third paid baseball

15 assistant in the but-for world. 12:02:43

16 That doesn't mean that -- because I only

17 went three years out. That doesn't mean that in

18 some further equilibrium, you wouldn't eventually

19 get to the bulk of Division I schools paying a third

20 assistant coach. 12:02:58

21 I just didn't measure that.

22 BY MR. RAPHAEL:

23 Q. Well, are you offering the opinion that

24 all schools who hired a volunteer baseball coach

25 would have hired a third paid baseball assistant in 12:03:09

1 the but-for world? 12:03:14

2 A. No, I'm not offering that opinion.

3 Q. Now, you're aware that the class

4 definition in this case is narrower in the context

5 of your report than it was when the complaint was 12:03:29

6 filed; right?

7 A. I don't remember what the class definition

8 was when the complaint was filed.

9 Q. But are you aware that the class

10 definition in your report has dropped a number of 12:03:41

11 schools that fielded baseball teams in Division I?

12 A. Yes. It doesn't have all of the schools

13 that field baseball teams in Division I.

14 Q. Right. And, in fact, the class definition

15 in your report has dropped a number of schools that 12:03:55

16 hired volunteer coaches in baseball during the class

17 period?

18 A. Yeah.

19 And, remember, I'm not defining the class.

20 I list the class. The class is defined -- 12:04:09

21 Q. I understand.

22 A. Yeah, okay.

23 But yeah, yeah, it has -- there are

24 schools that are not listed in the class definition

25 that hired volunteer baseball coaches in the past. 12:04:20

1 Q. And the schools that are no longer listed 12:04:25  
2 in the class who hired volunteer baseball coaches  
3 during the class period are the schools that your  
4 model did not predict would have hired an additional  
5 paid baseball coach in the but-for world; right? 12:04:40

6 MR. BROSHUIS: Objection; misstates prior  
7 testimony.

8 THE WITNESS: So my model predicts a certain  
9 number of schools and the class list, I think,  
10 largely mirrors -- the class definition largely 12:04:52  
11 mirrors those same schools.

12 BY MR. RAPHAEL:

13 Q. Are you aware of any -- are you aware of  
14 any school that you predict would have hired an  
15 additional paid baseball assistant in the but-for 12:05:03  
16 world who is not in the class?

17 A. I'm not aware of that, no.

18 Q. Are you aware of any school that you  
19 predict would not have hired an additional paid  
20 baseball coach that is in the class? 12:05:17

21 A. Not that I'm aware of.

22 Q. So the schools that are in the class, as  
23 you lay it out in your report, are the schools that  
24 your model predicts would have hired an additional  
25 paid baseball assistant in the but-for world? 12:05:33

1           A.    I mean, I didn't -- I think that's largely           12:05:36  
2           true. I mean, I don't know of a case where it's  
3           not.

4           Q.    And so far as you know, the schools that  
5           hired paid -- strike that.           12:05:46

6                   As far as you know, the schools that hired  
7           volunteer assistant coaches in the actual world who  
8           are not in the class are the schools that your model  
9           predicted would not have hired additional paid  
10          baseball coaches in the but-for world?           12:06:02

11          MR. STEWART: Actually, can I just understand  
12          the question for a second?

13          THE REPORTER: Yeah, you're going to have to  
14          repeat it.

15          MR. RAPHAEL: I'm hearing a consensus in the           12:06:09  
16          room to repeat it, so I will.

17          BY MR. RAPHAEL:

18          Q.    As far as you know, the schools who hired  
19          volunteer assistant coaches in the actual world who  
20          are not in the class are the schools where your           12:06:19  
21          model predicted they would not have hired additional  
22          paid assistants in baseball in the but-for world?

23          MR. BROSHUIS: And that's where I'll object to  
24          it misstating prior testimony.

25          THE WITNESS: My analysis provides a           12:06:36

1 is it takes time for them to sort of figure out what 12:13:56  
2 they want to do and then how they're going to  
3 actually do it.

4 Q. So one reason why a school might not have  
5 hired an additional paid coach after the bylaws were 12:14:10  
6 changed is that it takes time for their budgets to  
7 adjust?

8 A. Yes.

9 Q. And another reason I think you proffer as  
10 to why a school might not have hired an additional 12:14:19  
11 paid baseball coach after the rules changed is  
12 something called "lingering effects"; right?

13 A. Yes. I mean, lingering effects is the  
14 broader term, I guess.

15 Q. Are you offering any opinion that 12:14:32  
16 lingering effects and the amount of time it takes  
17 for budgets to adjust explains why every school that  
18 did not higher an additional paid baseball coach  
19 made that decision?

20 A. No. I don't need to know why, I just need 12:14:50  
21 to know whether they hired a coach or not.

22 Q. Okay. So -- and are you offering any  
23 specific opinion, understanding you think you don't  
24 need to, but are you offering any specific opinion  
25 as to why any particular school did not hire an 12:15:11

1 additional paid baseball coach after the bylaws 12:15:17  
2 changed?  
3 A. No.  
4 Q. Could you go to paragraph 174 of your  
5 declaration, please. 12:15:29  
6 MR. STEWART: Can I inquire whether the  
7 questioner is getting hungry?  
8 I know some of the participants are  
9 getting hungry.  
10 MR. BROSHUIS: We're a little short of an hour. 12:15:43  
11 If we could go another like 15 minutes?  
12 MR. RAPHAEL: Yeah, that makes sense.  
13 MR. BROSHUIS: Great. Thank you.  
14 MR. RAPHAEL: I thought Dennis was commenting  
15 on the tone of my questions. 12:15:50  
16 MR. STEWART: No, no. You're showing great  
17 staying power.  
18 BY MR. RAPHAEL:  
19 Q. All right. So in paragraph 74 --  
20 MR. BROSHUIS: 174? 12:16:06  
21 BY MR. RAPHAEL:  
22 Q. 174, excuse me, you refer to "(a) the  
23 schools that have already adopted."  
24 Do you see that?  
25 A. Yes. 12:16:18

1 Q. And "(b) the schools that will never 12:16:19  
2 adopt."

3 Right?

4 A. Sure.

5 Q. So is it your opinion that some schools 12:16:27  
6 will never adopt an additional paid baseball coach  
7 position?

8 MR. BROSHUIS: Objection; asked and answered.

9 THE WITNESS: I think -- I guess I'm not liking  
10 my word choice now that I sit here. I'm just saying 12:16:44  
11 that aren't adopting in the three years that I'm  
12 looking at.

13 You know, again, eventually, these schools  
14 may end up adopting that because they hit their  
15 equilibrium a little bit later, you know. 12:17:02

16 BY MR. RAPHAEL:

17 Q. Or eventually, some schools may not adopt  
18 an additional paid baseball coach position; right?

19 A. Yes.

20 Q. Did you investigate whether any Division I 12:17:36  
21 school that did not adopt an additional paid  
22 baseball coach position made that decision for  
23 reasons related to Title IX or gender equity?

24 A. Not specific to any particular school, but  
25 I did note that in both the actual world and the 12:18:02

1 experiment is still occurring. That's the whole 12:20:42  
2 point of this. I mean, that's a big part of this.

3 BY MR. RAPHAEL:

4 Q. Are you aware of any information in the  
5 record that you think is a better source of 12:20:52  
6 information about what schools would have done with  
7 their baseball programs in the but-for world than  
8 what they actually did after the bylaws were  
9 amended?

10 A. I am not. 12:21:13

11 Q. You didn't conduct any study as to the  
12 extent to which the need for university budgets to  
13 adjust explains why schools did not add additional  
14 paid baseball coaching positions; right?

15 A. No. As I said before, the -- first of 12:21:52  
16 all, this is a rounding error for any university  
17 budget hiring an assistant baseball coach.

18 But besides that, I looked at what they  
19 just actually did, meaning that they made whatever  
20 adjustments that they felt that they needed to make 12:22:09  
21 in order to hire those coaches.

22 Q. Now, the logic of lingering effects is  
23 residual collusion?

24 A. That's one way that lingering effects can  
25 occur, right? That isn't the only way that 12:22:28

1 AFTERNOON SESSION

1:05 P.M.

2 - - -

3 THE VIDEOGRAPHER: This marks the beginning of  
4 Media No. 4 in the deposition of Dr. Daniel Rascher.

5 We're back on the record. The time is 1:05. 13:05:58

6 EXAMINATION RESUMED

7 BY MR. RAPHAEL:

8 Q. Dr. Rascher, is it your opinion that the  
9 existence of the NCAA bylaws that are being  
10 challenged proves that all volunteer coaches would 13:06:07  
11 have been hired for paid positions without those  
12 bylaws?

13 A. No. I mean, I don't have an opinion on  
14 it, obviously, outside of baseball.

15 Within baseball, as I said, I'm only sort 13:06:30  
16 of measuring a certain number of schools and,  
17 therefore, a certain number of volunteer coaches and  
18 potentially more beyond sort of the outside of the  
19 class.

20 But I'm not saying -- I think you asked me 13:06:44  
21 this before, I'm not saying all 312 schools, I  
22 think, doing their data, would have necessarily  
23 hired a paid volunteer coach.

24 Q. All right. Thank you.

25 Is it true that many Division I baseball 13:07:02

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1 programs -- let me ask that differently. 13:07:05

2 Is it true that some Division I baseball  
3 programs did not pay the maximum number of paid  
4 coaches even during the class period?

5 A. Yes, I believe that's true. 13:07:20

6 Q. Do you know how many Division I baseball  
7 programs didn't pay the maximum number of paid  
8 coaches during the class period?

9 A. Excuse me. I don't know that as I sit  
10 here, no. 13:07:35

11 Q. As an economist, can you explain why some  
12 baseball programs would not have hired the maximum  
13 number of paid coaches that they were permitted to  
14 during the class period?

15 MR. BROSHUIS: Objection; foundation, outside 13:07:51  
16 the scope.

17 THE WITNESS: I mean, again, I didn't study the  
18 why. I just sort of observed the data.

19 But I think it just stems from their  
20 decision on their objectives and emphasis in that 13:08:10  
21 particular -- in baseball, you know. Like they've  
22 chosen not to emphasize as much baseball.

23 BY MR. RAPHAEL:

24 Q. Did you perform any study of the effect of  
25 either internal or external pay equity on Division I 13:08:32

1 baseball coach salaries? 13:08:36

2 MR. BROSHUIS: Objection; outside the scope.

3 THE WITNESS: Not specific to that but,

4 obviously, I did look at sort of the pay structures

5 within each team and within each peer group to sort 13:09:00

6 of get a sense -- you know, to understand sort of

7 that pay ladder that we see at the various schools.

8 And that helped me measure damages, yeah.

9 BY MR. RAPHAEL:

10 Q. But you didn't perform any study to 13:09:20

11 calculate the extent to which internal or external

12 pay equity explains the pay structure or salaries of

13 any baseball coaches?

14 A. No.

15 Q. Are you offering any opinion on who would 13:09:44

16 have applied to any paid position that would have

17 been offered in the but-for world, other than the

18 volunteer coaches who worked in the actual world?

19 MR. BROSHUIS: Objection; relevance.

20 THE WITNESS: I mean, only to the extent that I 13:10:06

21 looked at who did get the job. I don't know who

22 else applied, right, for each of the schools that

23 did end up paying someone, but I know who got the

24 job.

25 And you can see, as we talked about 13:10:23

1 became available. 13:11:34

2 So I think you generally can see the type

3 of person but no, not name by name, person by

4 person.

5 BY MR. RAPHAEL: 13:11:47

6 Q. What percentage of the coaches who got one

7 of the newly added paid assistant baseball coach

8 positions after the bylaws were amended were a

9 volunteer coach at the same school the year before?

10 A. What percentage? 13:12:05

11 Q. Yeah.

12 A. I think it was a little over 50 percent,

13 if I remember.

14 Q. Could we go back to Exhibit 1 from your

15 declaration, which I think is page 37. 13:12:14

16 So you see there in your November 1st

17 declaration, Exhibit 1, says that 66 percent of the

18 coaches who took the newly added positions in

19 baseball in 2023/2024 had been a D-I assistant the

20 year before; right? 13:12:48

21 A. Yes.

22 Q. And that D-I assistant category includes

23 both paid and volunteer positions, right?

24 A. I believe in this exhibit, it does. I

25 don't recall if I broke it out in my other Exhibit 1 13:13:01

1       that's in my more recent report. But I think in 13:13:06  
2       this one, yes, it includes both paid and unpaid.

3           Q. Okay. And you're saying that, to the best  
4       of your memory, the percentage of coaches who took  
5       newly added paid positions in 2023/2024 who had been 13:13:17  
6       volunteer coaches at the same school the year before  
7       was about 50 percent?

8           A. Well, I had the number calculated  
9       somewhere. I think I even report it. I don't know  
10      if it's in this section or not. But it's in here 13:13:33  
11      somewhere, I'm pretty sure. And if not, I know that  
12      it's a little above 50. It's more than half.

13          Q. Is it more than 60 percent?

14          A. I don't recall.

15          Q. But fair to say then that maybe a little 13:13:49  
16      less than half of the volunteer coaches at schools  
17      that then added a paid position in 2023/2024 were  
18      not hired for that position?

19          A. Well, some of them were hired for that  
20      position at another school, a good chunk of them, 13:14:11  
21      yeah.

22          Q. What percentage of volunteers in 2022 and  
23      2023 were hired for a paid position at a different  
24      school than where they volunteered?

25          A. Do you mean '23/'24 or are you being 13:14:27

1                   So we're trying to understand what would                   13:16:01  
2                   have happened in the but-for world based on a  
3                   particular year that isn't in the -- sort of the  
4                   middle of the class period.

5                   So like if a volunteer decides, okay, now                   13:16:11  
6                   I'm going on to do whatever, sort of regardless what  
7                   the labor market was, I'm not assuming that that was  
8                   like they couldn't get a job in that -- you know, we  
9                   don't know either way, right?

10                  But I don't know the percentages of -- I                   13:16:27  
11                  just don't know them as I sit here. It's sort of  
12                  breaking down a little bit, I think, that first line  
13                  there in the old exhibit.

14                  Q.     Agreed.

15                  But could it be the case that at least                   13:16:48  
16                  some of the volunteers in the 2022/2023 academic  
17                  year who did not get paid positions the following  
18                  year failed to do that because they were less  
19                  qualified than other candidates for that paid  
20                  position?   13:17:06

21                  MR. BROSHUIS:   Objection; assumes facts not in  
22                  evidence, lack of foundation.

23                  THE WITNESS:   I mean, I just don't have a -- I  
24                  don't have information on that, on the why. Again,  
25                  it's the what and it's the whether they would have           13:17:16

1       been paid or not is sort of what I looked at.       I       13:17:21  
2       don't know why.  
3       BY MR. RAPHAEL:  
4             Q.     But you can't conceive of it being the  
5       case that, for at least some of the volunteers who       13:17:27  
6       did not get paid positions the year after the bylaws  
7       changed, that that was because they were less  
8       qualified than other candidates?  
9             MR. BROSHUIS:   Same objections.  
10            THE WITNESS:   Again, I don't have -- you know,       13:17:41  
11       I don't know who applied for these jobs, so I don't  
12       know what the -- I can only see who ended up getting  
13       the jobs.  
14       BY MR. RAPHAEL:  
15            Q.     Right.   And you say you don't have any       13:17:54  
16       information on why any coaches who were volunteers  
17       in 2022/2023 didn't get paid positions the following  
18       year; right?  
19            A.     Yeah.   I mean, I don't have information on  
20       that.   13:18:09  
21            Q.     And why don't you have information on  
22       that?  
23            A.     I mean, it just wasn't part of what I  
24       needed to be able to do my analysis.   I didn't reach  
25       out to each volunteer and survey them and ask them,       13:18:20

1 you know, why they ended up where they ended up. 13:18:23

2 Q. You haven't investigated the  
3 qualifications of coaches who volunteered during the  
4 class period as compared to the coaches of who were  
5 hired for paid positions after the bylaws were 13:18:49  
6 amended; right?

7 A. I haven't investigated what about them?

8 Q. Their qualifications.

9 MR. STEWART: Objection; vague.

10 THE WITNESS: To the extent that they were 13:19:03  
11 hired, in both cases, they were qualified.

12 I mean, remember, even the volunteer  
13 position was limited. You couldn't hire more than  
14 one, so the schools had to pick who they wanted to  
15 hire for those positions. Once they are paid, it's 13:19:18  
16 the same situation.

17 But no, I did not look at each volunteer  
18 to try to figure out were they good pitching coaches  
19 or not.

20 BY MR. RAPHAEL: 13:19:35

21 Q. Is it possible that some of the coaches  
22 who were hired for paid positions after the bylaws  
23 were amended were more skilled or qualified than  
24 some coaches who were volunteers during the class  
25 period? 13:19:48

1 MR. BROSHUIS: Objection; lack of foundation, 13:19:49  
2 assumes facts not in evidence, outside the scope.

3 THE WITNESS: I mean, again, a lot of the same  
4 folks were hired, but it is possible, of course,  
5 that a school hired a coach. 13:20:02

6 But, remember, those are two different  
7 years, also, right? So could they have hired that  
8 coach in the prior year? We don't know. But they  
9 ended up hiring who they ended up hiring.

10 Again, I didn't need to ask or answer that 13:20:15  
11 question in order to do my analysis.

12 BY MR. RAPHAEL:

13 Q. Okay. So you have no opinion on whether  
14 coaches who were hired for a paid position at a  
15 school after the bylaws were amended had more skills 13:20:26  
16 or experience or were more qualified than the  
17 coaches who volunteered at the same school during  
18 the class period?

19 A. Well, we see of those more than half who  
20 were hired by the same school, they were a year or 13:20:44  
21 more qualified. Like it's the same person but  
22 they're a year more qualified.

23 And then the other volunteers who were  
24 hired by other schools, right, they're a year more  
25 qualified. 13:20:57

1 Q. Do you have any opinion on whether the 13:20:58  
2 coaches who were hired for the paid coach positions  
3 that were added after the bylaws were amended were  
4 more qualified or skilled than the volunteers who  
5 never got any paid position? 13:21:11

6 A. I mean, again, some of them are the same,  
7 but for the ones who are not the same, I mean, I  
8 don't have an opinion on that.

9 Q. Does your Probit model apply to schools  
10 that hired fewer than two paid assistant coaches 13:21:49  
11 during the class period?

12 A. I guess it -- yeah, I -- right, I plug all  
13 the schools in to see what the result is.

14 So, yes, some of the schools that hired  
15 fewer than two or two assistant coaches are in the 13:22:18  
16 analysis, yeah.

17 Q. And is it your opinion that the bylaws  
18 that are being challenged explain why a school might  
19 not have hired the maximum number of paid coaches  
20 that were permitted during the class period? 13:22:45

21 A. Wait, is it my opinion that the  
22 bylaws . . .

23 Q. Well, if a school didn't hire the maximum  
24 number of paid coaches that were permitted during  
25 the class period, is that because of the challenged 13:22:58

1       calibrate it." 13:53:27

2               You see that?

3           A.    Yeah.

4           Q.    And you're talking about a key test of the

5       model's effectiveness is to see how accurate its 13:53:33

6       predictions were; right?

7           A.    Yes.

8           Q.    All right. And your model predicted what

9       actually happened in 2023 and 2024 79 percent of the

10      time? 13:53:55

11          A.    Yes, 79 percent of the time when you

12      account for false positives and false negatives,

13      right?

14          Q.    Right.

15          A.    If you're looking at it from the 13:54:05

16      perspective of being conservative, meaning you don't

17      like to see a false positive, meaning that the model

18      predicts that they would have paid in '23/'24 but

19      they didn't, right, then you're sort of adding a

20      school to a list that may not really be there. 13:54:24

21               But I'm less concerned with a false

22      negative, meaning a school that the model doesn't

23      predict would have paid but, you know, lo and

24      behold, they decided to anyway, right?

25               So that's sort of why I've written it the 13:54:42

1 way that I've written it here. 13:54:45

2 And that's 89.4 percent accurate when you  
3 look at the model, whether it's correct or  
4 conservative.

5 Q. But your regression analysis incorrectly 13:54:58  
6 predicted the hiring decisions of baseball programs  
7 in 2023/2024 21 percent of the time for the data you  
8 had; right?

9 MR. BROSHUIS: Objection; asked and answered.

10 THE WITNESS: It overpredicts 10 percent of the 13:55:16  
11 time. It over and underpredicts about 20 percent of  
12 the time --

13 BY MR. RAPHAEL:

14 Q. Right.

15 A. -- yeah. 13:55:24

16 Q. Now, for any of the 20 percent of the  
17 time, roughly, that your model either overpredicts  
18 or underpredicts, do you know why it got the  
19 prediction wrong?

20 A. For the underpredict, it's real 13:55:36  
21 interesting. The peer conduct variable, it's like  
22 if you don't include that, you get more  
23 underprediction.

24 So in other words, you get schools that  
25 financially, you're like why are they paying this 13:55:57

1 person, but then they feel the pressure from the 13:56:00  
2 competition in their conference and then they end up  
3 paying anyway, you know, like, you know, in the real  
4 world, right?

5 So that was sort of driving what I call 13:56:11  
6 the lower left side of the matrix, which is the  
7 false negatives.

8 The false positives, I mean, some of that  
9 comes from the fact that we have one year of data.  
10 You know, we have -- we don't have all the schools, 13:56:26  
11 right? It's just a -- it's a model that, you know,  
12 that has -- I think it's sufficient by far but would  
13 certainly be, I think, even more accurate if it had  
14 more data.

15 And, unfortunately, we don't have that 13:56:45  
16 because some schools -- I don't know legally why,  
17 but some schools somehow can refuse subpoenas. I  
18 don't understand how that works.

19 Q. Other than only having one year of data,  
20 do you have any opinion on why any of the false 13:56:57  
21 positives in your model's predictions occurred?

22 A. I remember looking -- at one point, some  
23 of them actually were paying, and once I did another  
24 round of cleaning of the data, you see that they  
25 were actually paying. 13:57:36

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1 But that isn't in the final model because 13:57:37

2 I think we cleaned the data quite well.

3 As I sit here, I can't think of why some

4 of those schools are overpredicted. I would be

5 surprised in the second year of data if a number of 13:57:49

6 those don't end up paying.

7 Q. And -- well, let's look at an example just

8 to understand.

9 So if you could go to Appendix C to your

10 report? 13:58:06

11 A. It's at the end, yeah?

12 Q. Yes.

13 A. Okay.

14 MR. STEWART: Are you referring to a certain

15 page? 13:58:26

16 MR. RAPHAEL: I'm sorry, there's not. It's

17 just towards the end.

18 THE WITNESS: It's an appendix. It's the last

19 pages, yeah.

20 MR. BROSHUIS: Three pages from the very end. 13:58:34

21 MR. STEWART: I got it. Thank you.

22 BY MR. RAPHAEL:

23 Q. So could you look at -- on the first page

24 of Appendix C, could you look at, let's say, Bradley

25 University. 13:58:46

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You see that?

13:58:46

A. Sure, I see that.

Q. And you predict that Bradley was

72.4 percent likely to hire an additional paid

baseball coach; right?

13:58:56

A. Yes, that's what the model predicts.

Q. But, in fact, when Bradley was permitted

by NCAA bylaws to hire an additional paid baseball

coach, they didn't; right?

A. Right.

13:59:11

Q. And do you know why Bradley didn't do

that?

A. I don't.

Q. How would you try to figure out why

Bradley didn't hire an additional paid coach when

they were permitted to do so?

13:59:27

MR. BROSHUIS: Objection; relevance, outside  
the scope.

THE WITNESS: I mean, I suppose someone could  
ask them or someone could dig into that. It's not  
required for my analysis.

13:59:44

I mean, any model is not going to be  
100 percent perfect, obviously, right? So it's  
going to have errors on both sides, right, but it  
does have high goodness of fit.

14:00:00

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1 And so I don't know why Bradley did not

14:00:04

2 pay in the first year, but, you know, we've talked  
3 about some of the possible reasons, budget, timing.  
4 You know, that's sort of, I think, one of the main  
5 ones, is sort of when they decided to get around to  
6 doing it.

14:00:20

7 BY MR. RAPHAEL:

8 Q. But you don't know whether any of those  
9 things explained why Bradley didn't pay an  
10 additional paid baseball coach in 2023/2024; right?

14:00:29

11 MR. BROSHUIS: Objection; misstates the  
12 testimony, outside the scope, irrelevant.

13 THE WITNESS: No.

14 BY MR. RAPHAEL:

15 Q. I think you said that the underpredictions  
16 in your model, the false negatives, make your model  
17 conservative; right?

14:00:39

18 A. I mean, yeah. I mean, I'm not calculating  
19 damages for the volunteers at those schools because  
20 the model doesn't think in equilibrium, you know,  
21 look at 2018, a number of years ago, right, would  
22 they have paid that third coach?

14:01:03

23 In '23/'24, they did, but the model says  
24 that they would not likely have done that in  
25 2018/'19, at least, again, with -- you know, with

14:01:21

1       you know, easily be corrected using evidence that's       14:31:36  
2       common to the class.

3               I'm just not -- as I sit here, I don't --  
4       I can't think of a school that does that.

5               Q.   Well, if you did calculate damages for the       14:31:44  
6       year 2023/2024 at a school that didn't hire a third  
7       assistant coach that year, you would have calculated  
8       damages for people who don't exist; right?

9               MR. BROSHUIS:  Objection; vague, argumentative,  
10       asked and answered.       14:32:01

11              THE WITNESS:  Yeah, I think that's probably  
12       true, yes.

13       BY MR. RAPHAEL:

14              Q.   If a school hired a third paid assistant  
15       in 2023/2024 and you had data from that school, then       14:32:27  
16       you used that school's salary for the third paid  
17       assistant as the baseline for damages for that  
18       school during the class period; right?

19              A.   Yes.

20              Q.   So what you did was you just took the       14:32:43  
21       salary that a school that did pay a third assistant  
22       and then you kind of just discounted that for the  
23       time factors; right?

24              A.   Yes.

25              Q.   All right.  Now, if a school did not hire       14:32:57

1 an additional paid coach, a third paid assistant, in 14:33:01  
2 2023/2024, but they provided data and you predict  
3 that school would have hired a third paid assistant,  
4 then you calculate a base salary; right?

5 A. Yes. 14:33:18

6 Q. All right. And what you did to calculate  
7 that base salary is that you divided the schools in  
8 your sample into deciles; right?

9 A. Yes.

10 Q. And then you calculate how much do the 14:33:28  
11 schools in each decile pay their top two assistant  
12 coaches; right?

13 A. Yes.

14 Q. And you average those?

15 A. Yes, you can add them or average them, 14:33:38  
16 yes.

17 Q. Right. And then you compare the ratio of  
18 the school's salaries for its top two assistant  
19 coaches to the average of the other schools in its  
20 decile; right? 14:33:51

21 A. Yes.

22 Q. And then what you do is you multiply that  
23 by the average salary that schools in the decile  
24 paid their third assistant coach if they hired one  
25 in 2023/'24? 14:34:03

1 A. Yes. 14:34:08

2 Q. So the salaries that you predict that  
3 coaches would have earned at schools that didn't  
4 hire a third paid assistant when they could have are  
5 based in part on the salaries of the coaches who 14:34:18  
6 were hired as third paid assistants?

7 A. Yes.

8 Q. Are the schools that did hire third paid  
9 assistants likely to be different from the schools  
10 that didn't hire third paid assistants in any way? 14:34:45

11 MR. BROSHUIS: Objection; vague, foundation.

12 THE WITNESS: I mean, they hired them, so  
13 they're -- you know, they're interested in investing  
14 in baseball.

15 BY MR. RAPHAEL: 14:35:12

16 Q. Sure. The schools that hired third paid  
17 assistants after the bylaws were amended are, all  
18 things being equal, more likely to be interested in  
19 baseball than the schools that didn't hire third  
20 paid assistants? 14:35:27

21 MR. BROSHUIS: Objection; vague.

22 THE WITNESS: Again, all things being equal is  
23 carrying a lot of water, but yes, generally.

24 BY MR. RAPHAEL:

25 Q. And, in fact, the whole point of your 14:35:36

1 Q. For a labor economist, what are some of 14:44:51  
2 the factors that can affect earnings?

3 MR. BROSHUIS: Objection; outside the scope,  
4 foundation, overbroad.

5 THE WITNESS: I mean, generally, you know, 14:45:04  
6 skills, experience, demand for labor, the  
7 competitiveness of the supply of labor, and the  
8 competitiveness of the demand of labor.

9 I think those are generally the big  
10 factors. 14:45:24

11 BY MR. RAPHAEL:

12 Q. Could tenure affect earnings?

13 MR. BROSHUIS: Objection; vague and some other  
14 objections.

15 BY MR. RAPHAEL: 14:45:32

16 Q. But by "tenure," I mean like how long  
17 someone has worked at a particular school.

18 MR. BROSHUIS: The same objections.

19 THE WITNESS: Yeah, when I said, "experience,"  
20 maybe I was including that, but we can add 14:45:42  
21 experience separate from tenure and then tenure, if  
22 you want.

23 BY MR. RAPHAEL:

24 Q. And are you familiar with standard human  
25 capital theory? 14:45:48

1 A. Yes. 14:45:49

2 Q. And what is that?

3 (Whereupon, someone briefly entered and

4 exited the deposition room.)

5 A. It's essentially that workers are paid the 14:45:52

6 value of their -- are paid the value of their

7 marginal revenue product in competitive markets and

8 that individual factors can sort of drive what that

9 value is.

10 Q. And is human capital theory standard in 14:46:17

11 the field of economics?

12 MR. BROSHUIS: Objection; outside the scope.

13 THE WITNESS: I mean, it's one of the theories.

14 Obviously, you can't apply it to every situation.

15 But, yeah, it's one theory that's pretty common. 14:46:32

16 BY MR. RAPHAEL:

17 Q. You would find human capital theory in an

18 economics textbook; right?

19 A. In a labor textbook, probably. You might

20 not find it in a macro and micro textbook, but yeah. 14:46:43

21 Q. You would find human capital theory in a

22 labor economics textbook?

23 A. Yes.

24 Q. Did you apply human capital theory in this

25 case? 14:47:05

1 incentives. 14:53:33

2 BY MR. RAPHAEL:

3 Q. Right. And the point of economics is that

4 the person's personal incentives in the market are

5 part of looking at the entire market; right? 14:53:40

6 MR. BROSHUIS: Objection; argumentative.

7 MR. STEWART: Vague.

8 THE WITNESS: Right. And that's what I did.

9 Those volunteers worked all those years back to 2018

10 unpaid, right, because of the cartel. And when the 14:53:52

11 cartel changed its rule, right, then some of those

12 same people worked for those same schools, some of

13 those people worked for other schools and then other

14 people came in and worked for some of those schools,

15 right? 14:54:11

16 BY MR. RAPHAEL:

17 Q. You keep describing the 2023/2024 as --

18 what happened there as a result of the market; is

19 that right?

20 A. It's the beginning of an equilibrium. 14:54:21

21 Q. Right. And what you're starting to see

22 are -- in 2023/2024 are market forces working;

23 right?

24 A. You're starting to, yes.

25 Q. Right. And so when you see the decisions 14:54:32

that schools made about who they would hire for 14:54:34

their third paid assistant position in baseball,

that also is the market forces starting to work;

right?

MR. BROSHUIS: Objection; misstates prior testimony and asked and answered several times now and, also, argumentative.

THE WITNESS: It's the beginning of the market starting to work, but it's not at equilibrium.

BY MR. RAPHAEL: 14:54:58

Q. Great.

Let me show you a document. I believe  
this is Exhibit 81.

(Deposition Exhibit 81 was marked.)

BY MR. RAPHAEL: 14:55:31

Q. Take as much time as you want to review it.

A. Little tiny font.

Q. I'm sorry about that.

A. No, that's okay. I need better glasses. 14:55:48

I can't use them too long because I get sort of a headache, but they work for the tiny font.

Okay. Sure. I recognize this.

Q. Do you recognize Exhibit 81 as a document  
that you cite in your report? 14:55:59

1	A. Yes, I believe so.	14:56:02
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2 | Q. Exhibit 81 is an article from the U.S.

3 Bureau of Labor Statistics; right?

4	A. Yes.
---	---------

5 Q. And the U.S. Bureau of Labor Statistics, 14:56:14

6 as an economist, you see that as a generally

7 | reliable source of information?

8	A. Yes.
---	---------

9 Q. So do you see -- this is the third page of  
10 the document -- there's a header that says, "Reasons 14:56:29

11	Wages Vary."
----	--------------

12	Do you see that?
----	------------------

13	A. Yes.
----	---------

14 Q. All right. And it says, "Everyone brings  
15 unique skills and abilities to a job and no two jobs 14:56:38  
16 are exactly alike."

17	You see that?
----	---------------

18	A. Yes.
----	---------

19 Q. And do you agree that that's consistent  
20 with standard labor economic principles? 14:56:53

21 MR. BROSHUIS: Objection; outside the scope,  
22 foundation.

23 THE WITNESS: I mean, of course no two jobs are  
24 exactly alike. You know, that doesn't mean you  
25 can't analyze them in the labor market, but yeah.

1 BY MR. RAPHAEL: 14:57:07

2 Q. And you agree that it's standard labor

3 economics that everyone brings unique skills and

4 abilities to a job; right?

5 MR. BROSHUIS: The same objections. 14:57:14

6 THE WITNESS: Again, every person is different.

7 BY MR. RAPHAEL:

8 Q. So the answer to my question is yes?

9 A. Yes.

10 Q. And then this document from the Bureau of 14:57:22

11 Labor Statistics that you cited says, "Variations

12 affect pay for jobs within the same occupation.

13 Often, the more pronounced these variations are, the

14 bigger the wage difference."

15 Do you see that? 14:57:36

16 A. You lost me on where that is. Just --

17 wait --

18 Q. Oh, I apologize. I'm looking just where

19 we finished under the heading "Reasons Wages

20 Vary" -- 14:57:47

21 A. Oh, yeah.

22 Q. -- and this document from the U.S. Bureau

23 of Labor Statistics says that "Variations affect pay

24 for jobs within the same occupation. Often, the

25 more pronounced these variations are, the bigger the 14:57:56

1 wage difference." 14:57:59

2 Do you see that?

3 A. Yes.

4 Q. And do you agree that that reflects

5 standard labor economic principles? 14:58:03

6 MR. BROSHUIS: Same objections.

7 THE WITNESS: Yeah, I cited this because of

8 exactly this, that in this case, when you have the

9 same school, so the geography is the same, which is

10 one of the points she lists, and you have the same 14:58:24

11 industry, right, and you have the same employer, you

12 can take what the market said in '23/'24 and apply

13 it to the previous years.

14 BY MR. RAPHAEL:

15 Q. Well, how about if you had different 14:58:36

16 employers, is what you said still the same?

17 MR. BROSHUIS: Objection; incomplete

18 hypothetical, vague.

19 THE WITNESS: As this says, industry or

20 employer. So you have the same industry, also. 14:58:47

21 BY MR. RAPHAEL:

22 Q. Okay.

23 A. And you have employers that are competing

24 directly with each other under a same set of rules

25 that the NCAA puts forth about baseball teams, 14:58:57

1 right, similar number of scholarships, number of 14:59:01  
2 coaches.

3 You know, the NCAA sort of creates the  
4 rules to make these similar across schools.

5 Q. Is it a standard principle of labor 14:59:14  
6 economics that variations in the skill affect pay  
7 for jobs within the same occupation?

8 MR. BROSHUIS: Objection; outside the scope,  
9 foundation.

10 THE WITNESS: Again, in a textbook, yes. When 14:59:28  
11 there's other restrictions, you may not have that.

12 For instance, variations in skill caused  
13 all of the volunteer coaches to make zero dollars  
14 even though they were at different schools, right?

15 So sometimes you have labor market rules 14:59:48  
16 that don't make this true. So this is a general  
17 statement about a general competitive labor market.

18 BY MR. RAPHAEL:

19 Q. Right. It's standard in labor economics  
20 that in general, in a competitive labor market, 15:00:00  
21 variations affect pay for jobs within the same  
22 occupation; correct?

23 MR. BROSHUIS: Same objections.

24 THE WITNESS: Again, yes, that can be the case.

25 BY MR. RAPHAEL: 15:00:10

1 Q. And I think you said that that -- you 15:00:10  
2 would see that principle in a textbook; right?  
3 MR. BROSHUIS: Same objections.  
4 THE WITNESS: Yes, generally.  
5 BY MR. RAPHAEL: 15:00:18  
6 Q. All right. And is it standard in labor  
7 economics that, in general, in a competitive labor  
8 market, the more pronounced variations in the skill  
9 are, the bigger the wage difference will be among  
10 workers? 15:00:34  
11 MR. BROSHUIS: Same objections.  
12 THE WITNESS: Again, it depends.  
13 BY MR. RAPHAEL:  
14 Q. What does it depend on?  
15 A. It depends on the nature of the labor 15:00:43  
16 market. Does it have restrictions or not, like this  
17 labor market that we're talking about.  
18 Q. Okay. So in a labor market without  
19 restrictions, is it standard labor economics that  
20 the more pronounced variations in skill are, the 15:01:03  
21 bigger the wage difference among workers?  
22 MR. BROSHUIS: Same objections, and asked and  
23 answered now as well.  
24 THE WITNESS: Again, it depends on the  
25 distribution of the companies in those labor markets 15:01:17

1 and their individual demand. 15:01:21

2 I mean, it really depends on all aspects

3 of the labor market.

4 BY MR. RAPHAEL:

5 Q. Right. Wage levels at any particular job 15:01:28

6 in a market depend on the employer's individual

7 demand and the individual worker's skills; right?

8 MR. BROSHUIS: Objection; asked and answered,

9 vague, outside the scope.

10 THE WITNESS: Among other things. 15:01:41

11 BY MR. RAPHAEL:

12 Q. Did you do anything to control for the

13 possibility that the coaches who were hired as

14 additional paid coaches in 2023/2024 had more

15 skills, experience or tenure than the coaches who 15:02:05

16 were volunteers during the class period?

17 A. I noted that, again, many of them were the

18 same volunteers during the class period.

19 Q. And many of them were not; correct, sir?

20 A. Some were not. 15:02:26

21 Q. Right.

22 A. But many more were.

23 Q. Well, the number of paid coaches who were

24 hired as the third paid coach in 2023 and 2024 is a

25 lot smaller than the total number of volunteers 15:02:37

1           isn't it? 15:02:40

2           MR. BROSHUIS: Objection; vague, and, also,

3           we've covered all of this.

4           THE WITNESS: Yes.

5           BY MR. RAPHAEL: 15:02:50

6           Q. All right. And so did you do anything to

7           try to control for the fact that the paid coaches

8           hired as third assistants in 2023/2024 had more

9           skills or experience than coaches who were

10          volunteers during the class period? 15:03:08

11          A. Again, it was not -- it was not needed for

12          my analysis.

13          Q. And because you thought it was not needed

14          to control for differences in skill and experience

15          between volunteers and paid coaches who were hired 15:03:26

16          for the third assistant position in 2023/2024, you

17          didn't make any effort to control for that; right?

18          MR. BROSHUIS: Same objections.

19          MR. STEWART: Lacks foundation.

20          MR. BROSHUIS: Lacks foundation. 15:03:40

21          THE WITNESS: The analysis controls for the

22          amount that these coaches were paid, and as I said,

23          many of them were volunteers.

24                 So like it's the same coaches from the

25          same labor market, right? Volunteers from the same 15:03:55

1 school, volunteers from different schools, it's the 15:03:59  
2 same labor market, so these are the same group of  
3 coaches.

4 No, I didn't look at a particular school  
5 and a particular coach to see if they had one more 15:04:09  
6 year of experience than the volunteer from the year  
7 before. Now, that could be the same person because  
8 they had one more year experience, right?

9 No, I did not look at that. I looked at  
10 what the market said that filling that position on 15:04:19  
11 that team was worth, right, playing the role of that  
12 position on that team.

13 BY MR. RAPHAEL:

14 Q. But a coach playing the same role on the  
15 same team could provide a different marginal revenue 15:04:33  
16 product to the school; right?

17 MR. BROSHUIS: Objection; asked and answered,  
18 foundation.

19 THE WITNESS: I mean, that is possible. But  
20 we're dealing with the same sort of pool of coaches. 15:04:47  
21 So I don't think that that's a -- it's not like a  
22 Major League baseball coach came and decided to be  
23 the third assistant coach.

24 BY MR. RAPHAEL:

25 Q. Have you calculated the marginal revenue 15:05:02

1 product for any coach in Division I, ever? 15:05:05

2 MR. BROSHUIS: Objection; foundation,

3 relevance.

4 THE WITNESS: I actually have. It's been two

5 decades. It was not baseball. It was basketball. 15:05:24

6 But that's what you asked.

7 BY MR. RAPHAEL:

8 Q. All right. So you --

9 A. So I have calculated the MRP of coaches

10 and athletes. 15:05:34

11 Q. Not a good question. Let me ask a better

12 one.

13 Have you calculated the marginal revenue

14 product of any baseball coach in Division I during

15 the class period or after? 15:05:41

16 MR. BROSHUIS: Same objections.

17 THE WITNESS: I have appealed. I have not

18 calculated their MRP on the input side. I have

19 calculated what they are being paid on the output

20 side. 15:05:57

21 BY MR. RAPHAEL:

22 Q. Right. And so you're not offering the

23 opinion that the marginal revenue product of all

24 coaches who coached in Division I since the start of

25 the class period was the same, are you? 15:06:05

1 MR. BROSHUIS: Objection; relevance, lack of 15:06:08  
2 foundation, argumentative.

3 THE WITNESS: No, I'm not. I'm not providing  
4 that opinion, no.

5 BY MR. RAPHAEL: 15:06:17

6 Q. In fact, standard labor economics would  
7 tell you that different coaches have different  
8 marginal revenue products; isn't that right?

9 MR. BROSHUIS: Objection; same objections.

10 THE WITNESS: Again, depends on the situation. 15:06:27  
11 But generally, if you have lots of coaches at  
12 different schools, they're going to have different  
13 MRPs.

14 BY MR. RAPHAEL:

15 Q. And did you do anything to calculate -- to 15:06:36  
16 control for the possibility that the MRPs of the  
17 coaches who were hired as paid assistants for the  
18 third paid assistant position had higher MRPs than  
19 volunteers during the class period?

20 MR. BROSHUIS: Objection; outside the scope, 15:07:00  
21 irrelevant, foundation.

22 THE WITNESS: Again, I looked at the labor  
23 market and took note that these weren't a bunch of  
24 folks coming in from outside of the pool that  
25 already existed. 15:07:12

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1 I mean, that -- if you had seen that, a

15:07:13

2 bunch of coaches coming from outside who had a lot  
3 more experience, right, then that becomes a more  
4 interesting question. But we have the same pool of  
5 coaches basically moving into these paid positions.

15:07:26

6 BY MR. RAPHAEL:

7 Q. So other than noting that the coaches who  
8 moved into the paid positions, many of them were  
9 already in the labor market you've defined, did you  
10 do anything to control for the possibility that the  
11 coaches hired for third paid assistant positions in  
12 2023/2024 had higher MRPs than the volunteers during  
13 the class period?

15:07:41

14 MR. BROSHUIS: Objection; vague, outside the  
15 scope, irrelevant, asked and answered multiple  
16 times.

15:07:58

17 THE WITNESS: As I sit here, I can't recall.  
18 I'm just trying to think of whether I did something  
19 related to that but . . .

20 Yeah, I think I really just looked at what  
21 the market actually did in '23/'24 and noted that  
22 these are from the same labor market and that they  
23 essentially are doing the same job. It's the third  
24 assistant coach.

15:08:24

25 BY MR. RAPHAEL:

15:08:41

1 Q. So other than that, nothing to control for 15:08:42  
2 whether the coaches hired for new third paid  
3 assistant positions in 2023/2024 had higher MRPs  
4 than the volunteers during the class period?

5 MR. BROSHUIS: Same objections. 15:08:57

6 THE WITNESS: Again, I think that the estimate  
7 that I provide of what these coaches would have been  
8 paid is a reasonable estimate because it's what  
9 these coaches -- these same type of coaches -- were  
10 actually paid in the actual labor market, in a labor 15:09:10  
11 market that's not even at equilibrium yet.

12 So not only are you going to see more  
13 schools jumping in increasing demand, but you're  
14 going to see those wages rise over time.

15 So it's a conservative estimate based on 15:09:27  
16 what the schools were paying their other coaches and  
17 based on what they actually paid these coaches of  
18 what the damages were for these different  
19 volunteers.

20 BY MR. RAPHAEL: 15:09:37

21 Q. Okay. I know your counsel is objecting as  
22 asked and answered, but I just don't think I've  
23 gotten a clear answer to my question.

24 So other than looking at the actual  
25 salaries that were paid and noting that there were 15:09:45

1 coaches filling the new third paid assistant 15:09:48  
2 positions who came from the labor market, did you do  
3 anything to control for the possibility that the  
4 coaches who were hired for the new third paid  
5 assistant positions had higher MRPs than the 15:10:02  
6 volunteers?

7 MR. BROSHUIS: Same objections; still vague,  
8 outside the scope, irrelevant, asked and answered  
9 multiple times.

10 He's giving you his best answer and you 15:10:12  
11 just don't like it.

12 THE WITNESS: The revenues -- I do, actually,  
13 account for that directly with the revenues. So  
14 half of MRP is the marginal revenue, which comes  
15 from the revenues that the schools are generating. 15:10:22

16 The revenues that the schools are  
17 generating in '23/'24, I forecast that backwards to  
18 '22/'23, and it goes down typically because revenues  
19 go up over time. And so that's accounting for the  
20 MRP, if you will, of those coaches in '23/'24. 15:10:37

21 I'm accounting for that sort of step down  
22 because the revenues of those programs are going  
23 down over time.

24 BY MR. RAPHAEL:

25 Q. When you say, "MRP" or "marginal revenue 15:10:53

1 product," is that another way of saying the value 15:10:56  
2 that a coach provides?  
3 MR. BROSHUIS: Objection; vague.  
4 THE WITNESS: The dollar value, yeah.  
5 BY MR. RAPHAEL: 15:11:03  
6 Q. And is the dollar value that the coach  
7 provides always reflected directly in the revenues  
8 that a school earns from baseball?  
9 A. It's the combination of the revenues and  
10 the productivity. 15:11:16  
11 Q. And so the marginal revenue product could  
12 provide value -- a coach could provide value to a  
13 school as part of their marginal revenue product  
14 that was not reflected in the dollar amount of the  
15 revenues from the baseball program in any particular 15:11:36  
16 year?  
17 A. I mean, we talked about the schools having  
18 objective functions like branding and stuff. So, I  
19 mean, all that is sort of baked into it, but yes,  
20 that's not just directly the revenues from the 15:11:49  
21 baseball program.  
22 Q. You used essentially the same method that  
23 you used to calculate the salaries that volunteer  
24 coaches would have been paid to calculate the value  
25 of the health benefits you say they would have 15:12:07

1 MR. BROSHUIS: Same objection. 15:14:45

2 THE WITNESS: Other than from the coming from  
3 the same pool of volunteers who more than half of  
4 them ended up at the same school doing the same job  
5 as an indicator of the importance of what those 15:14:57  
6 schools value to those assistant coaches.

7 BY MR. RAPHAEL:

8 Q. So you're inferring something from how  
9 much coaches in 2023/2024 were paid about the value  
10 they provided; is that fair? 15:15:12

11 A. I mean, I don't need to measure the value  
12 they provided for my analysis. I'm measuring  
13 damages, right?

14 But as I said, all those volunteers who  
15 ended up being hired at the same school for some -- 15:15:24  
16 whatever amount they were paid is at least an  
17 indication of what those schools were willing to pay  
18 in order to have them coach for them, which partly  
19 includes at least the value that they bring.

20 Q. Right. The amount that the schools paid 15:15:38  
21 the third paid assistants they hired in 2023/2024 is  
22 in part based on the value they perceived they would  
23 get from the coaches; right?

24 MR. BROSHUIS: Same objections.

25 THE WITNESS: In part, yes. 15:15:52

1 BY MR. RAPHAEL: 15:15:53

2 Q. Right. And you don't have any salaries

3 for the coaches who volunteered during the class

4 period because they weren't paid anything; right?

5 A. That is correct. 15:16:01

6 Q. Right. So you don't have any data on the

7 coaches who were never hired for a paid position

8 what their value to the schools was, do you?

9 A. I mean, the cartel didn't allow that.

10 Q. Right. And so you don't have that data; 15:16:13

11 right?

12 A. I don't know what the volunteer -- I know

13 what the volunteer was paid, zero dollars.

14 I think a fair estimate of what they would

15 have been paid is what is the fact that they did the 15:16:27

16 job and then we see what the similar job was paid

17 once it was allowed.

18 Q. Right. So you're inferring that the value

19 that the volunteers provided and the third paid

20 assistants provided was the same because they did 15:16:43

21 the same job?

22 A. I mean, generally, they were hired into a

23 position that the year before they weren't allowed

24 to be paid for, yeah.

25 Q. Okay. But do you agree that different 15:16:54

1 workers can provide different value in the same job? 15:16:56

2 MR. BROSHUIS: Objection; asked and answered,

3 foundation, outside the scope.

4 THE WITNESS: Again, generally, that may be the

5 case. It all depends on the situation. 15:17:08

6 BY MR. RAPHAEL:

7 Q. So if I looked at your damages model,

8 would I see any specific data or variables for the

9 tenure, skills, age or experience for any Division I

10 baseball coach? 15:17:22

11 A. See any variables?

12 Q. Yeah.

13 A. You just don't observe them -- we don't

14 observe them directly. They're baked into the

15 amount that's being paid. 15:17:38

16 Q. Okay. So other than them being a part of

17 the amount that's paid, you don't have any part of

18 your damages model that has a variable or piece of

19 data for age, tenure, experience or skills; right?

20 A. Yeah, I mean, it's part of what's baked 15:18:02

21 into the market wage itself.

22 Q. And other than what's baked in, you don't

23 have any variables or specific pieces of data about

24 age, tenure, experience or skills for any D-I coach

25 in your damages model; right? 15:18:19

1 MR. BROSHUIS: Objection; asked and answered. 15:18:21

2 THE WITNESS: I don't need to have it in my

3 model, so I don't have it in my model.

4 BY MR. RAPHAEL:

5 Q. Thank you. 15:18:26

6 Let's go back to health insurance.

7 Were you aware that some baseball coaches

8 had health insurance from other sources while they

9 were volunteers?

10 MR. BROSHUIS: Objection; assumes facts not in 15:18:39

11 evidence.

12 THE WITNESS: That may be the case.

13 BY MR. RAPHAEL:

14 Q. Did you know whether Michael Hacker had

15 health insurance from another source while he was a 15:18:51

16 volunteer coach at UC Davis?

17 A. I'm unaware of that.

18 Q. Would it be your expectation that at least

19 some of the volunteer coaches had health insurance

20 through another source, like a spouse or a parent's 15:19:08

21 job?

22 MR. BROSHUIS: Objection; calls for

23 speculation.

24 (Reporter seeks clarification.)

25 THE WITNESS: Regardless, as part of an offer 15:19:20

1 to be paid health insurance as part of the cartel 15:20:30  
2 rule.

3 So I can't see what their health insurance  
4 would have been from the school, but you see the  
5 other coaches right next to them, the second 15:20:39  
6 assistant, the first assistant, the head coach  
7 getting, you know, health insurance payments.

8 BY MR. RAPHAEL:

9 Q. You didn't investigate whether any class  
10 member had health insurance through another source 15:20:57  
11 during the class period, did you?

12 MR. BROSHUIS: Objection; asked and answered.

13 THE WITNESS: I don't know whether these  
14 various volunteers -- I don't have access to that  
15 information. 15:21:09

16 I think that would probably violate HIPAA  
17 or FERPA.

18 BY MR. RAPHAEL:

19 Q. Can you think of any way to figure out the  
20 health insurance that each class member had other 15:21:16  
21 than asking them?

22 MR. BROSHUIS: Same objections and irrelevant.

23 THE WITNESS: As I sit here, no.

24 BY MR. RAPHAEL:

25 Q. I think you -- well, strike that. 15:21:33

1                   When an employee already has health                   15:21:38  
2           insurance from another source, do they always get  
3           the value of the health insurance offered to them  
4           from their employer in extra cash?

5           MR. BROSHUIS:   Objection; vague.                   15:21:49

6           THE WITNESS:   They can, but I wouldn't say they  
7           always do, no.

8           BY MR. RAPHAEL:

9           Q.     It would vary from employee to employee?

10          MR. BROSHUIS:   Objection; foundation,                   15:21:57  
11          irrelevant.

12          THE WITNESS:   It might.

13          BY MR. RAPHAEL:

14          Q.     Did you do any analysis or investigation  
15          of how the health insurance plans available to                   15:22:05  
16          coaches at Division I colleges and universities  
17          compared to health insurance plans that any  
18          volunteer coaches actually had?

19          MR. BROSHUIS:   Objection; irrelevant.

20          THE WITNESS:   I mean, I couldn't. I don't know                   15:22:26  
21          what health insurance plans the volunteer coaches  
22          actually had.

23          BY MR. RAPHAEL:

24          Q.     And so you don't know whether some of the  
25          health insurance plans that volunteer coaches                   15:22:34

1 actually had during the class period were more 15:22:37  
2 valuable to them than the health insurance they  
3 would have gotten through the school they  
4 volunteered for?

5 MR. BROSHUIS: Objection; vague, irrelevant, 15:22:46  
6 assumes facts not in evidence.

7 THE WITNESS: Well, I do know that, again, as  
8 part of an offer, the health insurance package that  
9 one gets is at least an option value. I mean, at  
10 least it has value in terms of the option of being 15:22:59  
11 able to accept it as a health insurance plan.

12 BY MR. RAPHAEL:

13 Q. Does your damages for health insurance in  
14 this case measure the option value of health  
15 insurance? 15:23:11

16 A. No.

17 MR. RAPHAEL: Why don't we take a break here  
18 and I can see how much more I have.

19 MR. BROSHUIS: Sure.

20 THE VIDEOGRAPHER: This marks the end of Media 15:23:18  
21 No. 5. Off the record. The time is 3:23.

22 (Recess taken.)

23 THE VIDEOGRAPHER: This marks the beginning of  
24 Media No. 6 in the deposition of Dr. Daniel Rascher.

25 We're back on the record. The time is 3:40. 15:40:05

1 on that team and be part of the labor market or not. 15:52:09

2 So I don't really have an answer for that  
3 one person.

4 Q. Okay. So you have no opinion on whether a  
5 graduate assistant is participating in the labor 15:52:18  
6 market you've defined at the time that they are  
7 working as a graduate assistant; is that right?

8 A. I mean, I would sort of have to see  
9 what . . .

10 Yeah, you know, I think you can -- whether 15:52:43  
11 you define them inside the market or out, it doesn't  
12 change my opinion on this entire case.

13 As I sit here, I guess, to me, it sort of  
14 depends on what they're doing for that school.

15 So, you know, you can define them inside 15:53:00  
16 the labor market or out. It doesn't affect the  
17 general relevant market or the market power that the  
18 schools have.

19 Q. Am I correct then that, in Exhibit 1 in  
20 your amended declaration, of the coaches who were 15:53:11  
21 hired for third paid assistant jobs that you had  
22 data for, 32 percent of those coaches were working  
23 at a job outside of the labor market you have  
24 defined in the year before they became paid  
25 assistants? 15:53:30

1 MR. BROSHUIS: Objection; misstates prior 15:53:31  
2 testimony.  
3 THE WITNESS: So as I said, the baseball  
4 director is sort of that next person down typically  
5 from those third assistant coaches. So they're part 15:53:37  
6 of the team, right, part of the staff. I know  
7 there's rules about what they're allowed to do and  
8 not allowed to do that the NCAA puts forth.  
9 So in the year before, they're the  
10 baseball director, right, they're doing the 15:53:56  
11 logistics and other things. In the year that they  
12 were hired, they became part of that labor market.  
13 So in the year before, 32 percent are not  
14 in the labor market until the following year.  
15 BY MR. RAPHAEL: 15:54:17  
16 Q. Can you tell me anything other than the  
17 numbers in this chart and some changes to reflect  
18 claw backs by the NCAA that you made in your amended  
19 report?  
20 A. Oh, what were the changes -- 15:54:37  
21 Q. Yeah.  
22 A. -- from the first report?  
23 Q. Yes.  
24 A. So this table -- you're right, there's a  
25 claw back you mentioned of a document. 15:54:44

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were administered an oath; that  
8 a record of the proceedings was made by me using  
9 machine shorthand which was thereafter transcribed  
10 under my direction; that the foregoing transcript is  
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to  
13 the original transcript of a deposition in a Federal  
14 Case, before completion of the proceedings, review  
15 of the transcript (X) was ( ) was not requested.

16 I further certify that I am neither  
17 financially interested in the action nor a relative  
18 or employee of any attorney of any party to this  
19 action.

20 IN WITNESS WHEREOF, I have this date  
21 subscribed my name.

22 Dated: 12/10/24

23  
24 

25 ANRAE WIMBERLEY, CSR No. 7778